

REVISIONS:
Item 28-Pulled per Law Department
Item 31-Recommended Action.

AUGUST 15, 2006 AGENDA REPORTS

Agenda Item No. 11a.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0832

TO: Mayor and City Council Members

SUBJECT: Petition to construct an Acceleration/Deceleration Lane on the south side of 21st Street, west of Greenwich to serve Oak Creek Addition (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the new Petition.

Background: On April 25, 2006, the City Council approved a Petition to construct an acceleration/deceleration lane on the south side of 21st Street, west of Greenwich, to serve Oak Creek Addition. An attempt to award a construction contract within the budget set by the Petition was not successful. The developer has submitted a new Petition with an increased budget. The signatures on the new Petition represent 100% of the improvement district.

Analysis: The project will serve a new commercial development located south of 21st Street, west of Greenwich.

Financial Considerations: The existing Petition totals \$200,400 with the total assessed to the improvement district. The new Petition totals \$252,000 with the total assessed to the improvement district.

Goal Impact: This project will address the Efficient Infrastructure goal by improving vehicular access to a new commercial development. It will also address the Economic Vitality and Affordable Living goal by facilitating new commercial development that is vital to Wichita's continued economic growth.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of a majority of property in the improvement district.

Recommendations/Actions: It is recommended that the City Council approve the new Petition, adopt the Resolution and authorize the necessary signatures.

Agenda Item No. 11b.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0833

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Sanitary Sewer Main to serve an area north of 21st Street, west of 159th Street East (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petition.

Background: The Petition has been signed by three owners representing 100% of the improvement district.

Analysis: The project will provide sanitary sewer main service to a developing residential and commercial area north of 21st Street, west of 159th Street East. It will also serve a new Andover School building.

Financial Considerations: The Petition totals \$700,000, with \$514,106 paid by the Sewer Utility and \$185,894 assessed to the improvement district. City Council policy provides that sanitary sewer mains are funded 50% by the Sewer Utility and 50% by special assessments. However, much of the service area for this project is currently outside the City limits and cannot be assessed at this time. Sewer Main Benefit fees will be assessed to the area as it develops and will recover a large part of the Utility's share the project cost.

Goal Impact: This project addresses the Efficient Infrastructure and Economic Vitality goals by facilitating new development that is critical to Wichita's continued growth.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of a majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition, adopt the authorizing Resolution, adopt the Resolution authorizing revenue bonds, approve the notice of intent to issue revenue bonds and authorize the necessary signatures.

Agenda Item No. 14a

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0834

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Construction Engineering and Staking in Auburn Hills 16th Addition (south of Maple, east of 151st Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: The City Council approved the water and sanitary sewer improvements in Auburn Hills 16th Addition on March 21, 2006. On June 6, 2006 the City approved an Agreement with Baughman Company P.A. to design the improvements. The Design Agreement with Baughman requires Baughman to provide construction engineering and staking services if requested by the City.

Analysis: The proposed Supplemental Agreement between the City and Baughman provides for construction engineering and staking the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$31,810 and will be paid by special assessments.

Goal Impact: This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water and sanitary sewer improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Supplemental Agreement and authorize the necessary signatures.

Attachment: Supplemental Agreement

SUPPLEMENTAL AGREEMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES DATED JUNE 6, 2006, BETWEEN THE CITY OF WICHITA, KANSAS PARTY OF THE FIRST PART, HEREINAFTER CALLED THE "CITY, " AND BAUGHMAN COMPANY, P.A., PARTY OF THE SECOND PART, HEREINAFTER CALLED THE "ENGINEER."

WITNESSETH:

WHEREAS, there now exists a Contract (dated June 6, 2006) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements in AUBURN HILLS 16TH ADDITION (south of Maple, east of 151st Street West).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

STAKING, AS-BUILT AND CONSTRUCTION ENGINEERING
(as per the City of Wichita Standard Construction Engineering Practices)

WATER DISTRIBUTION SYSTEM NO. 448 90122 serving Lots 25 through 76, Block A; Lots 32 through 51, Block G, Auburn Hills 16th Addition (south of Maple, east of 151st Street West) (Project No. 448 90122).

LATERAL 50, COWSKIN INTERCEPTOR SEWER from serving Lots 25 through 76, Block A; Lots 8 through 14, Block G, Lots 22 through 51, Block G, Auburn Hills 16th Addition (south of Maple, east of 151st Street West) (Project No. 468 84090).

Construction staking and final as-built of all areas included in the project mass grading plan will be the responsibility of the ENGINEER, with final as-built plans submitted and sealed by a licensed land surveyor or registered professional engineer. Minimum construction staking shall consist of the following: grade stakes set at 50 foot centers in tangent sections, and 25 foot centers through curve sections, at the street centerline (to match CL street stationing per paving plans); both right-of-way lines (at lot corners); back lot/easement lines (at lot corners); as well as any other grade break lines. Grade stake cuts and fills shall be to the dirt grade as required by the mass grading plan details, and shall not be set for final pavement grade, nor to actual final subgrade elevation. Final elevations for all areas outside the street right-of-way to be graded per plans, provisions or otherwise, including lots, easements, ponds and reserve areas, shall be within +/-0.2' of plan call-outs, unless otherwise stated in plans or provisions. Final elevations within the street right-of-way shall be within +/-0.1' of plan call-outs. The ENGINEER will be responsible to provide initial as-built(s) to the City's Project Engineer, who will coordinate any rework with the contractor. The ENGINEER'S survey and as-built generation responsibilities will include re-checking all points deemed to be out of compliance by the City project engineer, regardless of the

number of times to achieve compliance. Two copies of the project specific mass grading and pond construction plan sheets will be submitted to the Project Engineer within 5 days of completion of final grading, will show original plan and final as-built elevations at all original call-out locations. Submittals will include both standard plan sheets as well as an electronic file.

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

| | |
|-----------------------|--------------------|
| Project No. 448 90122 | \$12,690.00 |
| Project No. 468 84090 | <u>\$19,120.00</u> |
| TOTAL | \$31,810.00 |

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2006.

BY ACTION OF THE CITY COUNCIL
Carlos Mayans, Mayor

ATTEST:
Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.
(Name & Title)

ATTEST

Agenda Item No.14b.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0835

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Construction Engineering and Staking in Emerald Bay Estates Addition (west of West Street, north of 21st) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: The City Council approved the water improvements in Emerald Bay Estates Addition on January 24, 2006. On February 7, 2006 the City approved an Agreement with Ruggles & Bohm, P.A. (R&B) to design the improvements. The Design Agreement with R&B requires R&B to provide construction engineering and staking services if requested by the City.

Analysis: The proposed Supplemental Agreement between the City and R&B provides for construction engineering and staking the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Financial Considerations: Payment to R&B will be on a lump sum basis of \$9,000 and will be paid by special assessments.

Goal Impact: This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Supplemental Agreement and authorize the necessary signatures.

Attachment: Supplemental Agreement

SUPPLEMENTAL AGREEMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES DATED FEBRUARY 7, 2006, BETWEEN THE CITY OF WICHITA, KANSAS, PARTY OF THE FIRST PART, HEREINAFTER CALLED THE "CITY," AND RUGGLES & BOHM, P.A., PARTY OF THE SECOND PART, HEREINAFTER CALLED THE "ENGINEER."

WITNESSETH:

WHEREAS, there now exists a Contract (dated February 7, 2006) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements in EMERALD BAY ESTATES ADDITION (west of West Street, north of 21st).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

STAKING, AS-BUILT AND CONSTRUCTION ENGINEERING

(as per the City of Wichita Standard Construction Engineering Practices)

WATER DISTRIBUTION SYSTEM NO. 448 90162 serving Lots 1 through 60, Block 1; Lots 1 through 3, Block 2, Emerald Bay Estates (west of West Street, north of 21st) (Project No. 448 90162).

Construction staking and final as-built of all areas included in the project mass grading plan will be the responsibility of the ENGINEER, with final as-built plans submitted and sealed by a licensed land surveyor or registered professional engineer. Minimum construction staking shall consist of the following: grade stakes set at 50 foot centers in tangent sections, and 25 foot centers through curve sections, at the street centerline (to match CL street stationing per paving plans); both right-of-way lines (at lot corners); back lot/easement lines (at lot corners); as well as any other grade break lines. Grade stake cuts and fills shall be to the dirt grade as required by the mass grading plan details, and shall not be set for final pavement grade, nor to actual final subgrade elevation. Final elevations for all areas outside the street right-of-way to be graded per plans, provisions or otherwise, including lots, easements, ponds and reserve areas, shall be within +/-0.2' of plan call-outs, unless otherwise stated in plans or provisions. Final elevations within the street right-of-way shall be within +/-0.1' of plan call-outs. The ENGINEER will be responsible to provide initial as-built(s) to the City's Project

Engineer, who will coordinate any rework with the contractor. The ENGINEER'S survey and as-built generation responsibilities will include re-checking all points deemed to be out of compliance by the City project engineer, regardless of the number of times to achieve compliance. Two copies of the project specific mass grading and pond construction plan sheets will be submitted to the Project Engineer within 5 days of completion of final grading, will show original plan and final as-built elevations at all original call-out locations. Submittals will include both standard plan sheets as well as an electronic file.

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

448 90162 (735302) \$9,000.00

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2006.

BY ACTION OF THE CITY COUNCIL
Carlos Mayans, Mayor

ATTEST:
Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.
(Name & Title)

ATTEST:

Agenda Item No. 15a

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0864

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Copper Gate North Addition
(north of 13th, west of 135th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water and sanitary sewer improvements in Copper Gate North Addition on April 5, 2005.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water and sanitary sewer in Copper Gate North Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$20,300 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water and sanitary sewer improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement
AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS, and BAUGHMAN COMPANY, P.A., for COPPER GATE NORTH ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90015 serving Lots 20 and 21, Block A; Lots 1 through 6, Block B; Lots 1 through 12, Block C; Lots 1 through 11, Block D; Lots 17 through 22, Block D; Lots 1 through 6, Block E, Copper Gate North Addition (north of 13th, west of 135th Street West) (Project No. 448 90015).

LATERAL 5, MAIN 4, NORTHWEST INTERCEPTOR SEWER serving Lots 20 and 21, Block A; Lots 1 through 6, Block B; Lots 1 through 12, Block C; Lots 1 through 6, Block D; Lots 17 through 22, Block D; Lots 1 through 6, Block E, Copper Gate North Addition (north of 13th, west of 135th Street West) (Project No. 468 83974).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Copper Gate North Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. AGREES

IN ADDITION, THE ENGINEER

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though

fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as

Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|-------------|
| Project No. 448 90015 | \$ 7,800.00 |
| Project No. 468 83974 | \$12,500.00 |
| TOTAL | \$20,300.00 |

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.

2. Additional design services not covered by the scope of this agreement.

3. Construction staking, material testing, inspection and administration related to the PROJECT.

4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by

the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY
AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.
(Name & Title)

"EXHIBIT "A

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated

representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT's plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by September 4, 2006. (Project No. 448 90015).

Plan Development for the water

b. Plan Development for the sewer improvements by September 4, 2006. (Project No. 468 83974).

Plan Development for the sewer

Agenda Item No. 15b

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0865

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Fox Ridge Addition (north of 29th Street North, east of Maize) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water, sanitary sewer and storm water improvements in Fox Ridge Addition on July 11, 2006.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of bond financed improvements consisting of water, sanitary sewer and storm water in Fox Ridge Addition. Per Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of \$50,900 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer and storm water improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS, and MKEC ENGINEERING CONSULTANTS, INC., for FOX RIDGE ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90204 serving Lots 46 through 101, Block 1; Lots 1 through 12, Block 2, Fox Ridge Addition (north of 29th Street North, east of Maize) (Project No. 468 90204).

LATERAL 3, MAIN 6, (PART D) NOWTHWEST INTERCEPTOR SEWER serving Lots 46 through 101, Block 1; Lots 1 through 12, Block 2; Lots 22 through 41, Block 4, Fox Ridge Addition (north of 29th Street North, east of Maize) (Project No. 468 84202).

STORM WATER DRAIN NO. 263 serving Lots 61 through 101, Block 1; Lots 1 through 12, Block 2, Fox Ridge Addition (north of 29th Street North, west of Tyler) (Project No. 468 83997).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Fox Ridge Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which

is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement.

The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|--------------------|
| Project No. 448 90204 | \$ 9,500.00 |
| Project No. 468 84202 | \$22,100.00 |
| Project No. 468 83997 | <u>\$19,300.00</u> |
| TOTAL | \$50,900.00 |

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

- 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
- 2. Additional design services not covered by the scope of this agreement.
- 3. Construction staking, material testing, inspection and administration related to the PROJECT.
- 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental

Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.
(Name & Title)

ATTEST:

EXHIBIT "A"
SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 ½"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files

are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a. Plan Development for the water improvements by 120 days from notice to proceed.

(Project No. 448 90204).

b. Plan Development for the sewer improvements by 120 days from notice to proceed.

(Project No. 468 84202).

c. Plan Development for the drainage improvements by 120 days from notice to proceed.

(Project No. 468 83997).

Agenda Item No. 15c

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0866

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Auburn Hills 16th Addition
(south of Maple, east of 151st Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving improvements in Auburn Hills 16th Addition on March 21, 2006.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of paving in Auburn Hills 16th Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$77,700 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement
AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA,
KANSAS and BAUGHMAN COMPANY, P.A., for AUBURN HILLS 16TH ADDITION

THIS AGREEMENT, made this _____ day of

_____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

ONEWOOD from the east line of the plat, west to the east line of Fawnwood, FAWNWOOD from the north line of Lot 11, Block A, south to the south line of the plat, MOSCELYN and MOSCELYN COURT from the west line of Fawnwood, west to the west line of the plat, and on CITY VIEW from the south line of Onewood, southwesterly to the southwest line of Lot 13, Block C and that sidewalk be constructed on Onewood, Fawnwood and Moscelyn (south of Maple, east of 151st Street West) (Project No. 472 84290).

FAWNWOOD from the north line of Valley Hi Road, north to the north line of the plat, on FAWNWOOD COURT (Lots 65 through 73, Block A) from the west line of Fawnwood, west to and including the cul-de-sac, VALLEY HI ROAD and VALLEY HI CIRCLE from the west line of Lot 31, Block G, west to and including the cul-de-sac and on FAWNWOOD COURT (Lots 39 through 48, Block A) from the west line of Fawnwood, west to and including the cul-de-sac; FAWNWOOD COURT (Lots 49 through 61, Block A) from the west line of Fawnwood, west to and including the cul-de-sac; on FAWNWOOD COURT (Lots 34 through 40, Block G) from the east line of Fawnwood, east to and including the cul-de-sac; and FAWNWOOD COURT (Lots 41 through 46, Block G) from the east line of Fawnwood, east to and including the cul-de-sac and that sidewalk be constructed on Fawnwood and Valley Hi Road (south of Maple, east of 151st Street West) (Project No. 472 84291)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Auburn Hills 16th Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given

thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|--------------------|
| Project No. 472 84290 | \$29,500.00 |
| Project No. 472 84291 | <u>\$48,200.00</u> |
| TOTAL | \$77,700.00 |

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL
Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.
(Name & Title)
ATTEST:

“EXHIBIT “A

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22” x 36” mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY’S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT’S plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 78, “Cleanup, Restoration or Replacement Following Construction.” Also, final plans, field notes and other pertinent project mapping records are to be provided

to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the paving improvements by September 18, 2006. (Project No. 472 84290).

b. Plan Development for the paving improvements by September 4, 2006. (Project No. 472 84291).

Agenda Item No. 15d

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0867

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Merton, east of Seneca
(District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving project on May 9, 2006.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of paving Merton, east of Seneca. The Staff Screening & Selection Committee selected Baughman for the design on June 19, 2006.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$12,500 and will be paid by special assessments.

Goal Impact: This project will address the Efficient Infrastructure goal by providing paving improvements to a developed commercial area.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS and BAUGHMAN COMPANY, P.A. for MERTON, EAST OF SENECA

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

MERTON, east from the east line of Seneca to and including the cul-de-sac. (south of Harry, east of Seneca) (Project No. 472 84110).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements to Merton, east of Seneca and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions

of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 472 84110 \$12,500.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection

with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

(Name & Title)

ATTEST:

EXHIBIT "A"

SCOPE OF SERVICES

MERTON, east from the east line of Seneca
to and including the cul-de-sac (south of Harry, east of Seneca)

(Project No. 472 84110)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.
7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.
8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
9. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
10. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
11. The Engineer shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
12. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.
 - (a) Completion of all work required by this agreement (including submittal of final approved plan tracings, field notes, and related PROJECT documents 10 weeks.

Agenda Item No. 15e

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0868

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Cross Pointe Addition (south of 21st, east of Greenwich) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system, sanitary sewer, storm water drainage and paving improvements in Cross Pointe Addition on June 28, 2005.

Analysis: The proposed Agreement between the City and Professional Engineering Consultants, P.A. (PEC) provides for the design of bond financed improvements consisting of water, sanitary sewer, storm water drainage and paving in Cross Pointe Addition. Per Administrative Regulation 1.10, staff recommends that PEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to PEC will be on a lump sum basis of \$56,300 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer, storm water drainage and paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS and PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

For CROSS POINTE ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90083 serving Lots 3 through 12, Block 1, Cross Pointe Addition (south of 21st, east of Greenwich) (Project No. 448 90083).

LATERAL 5, MAIN 16, FOUR MILE CREEK serving Lots 3 through 12, Block 1, Cross Pointe Addition (south of 21st, east of Greenwich) (Project No. 468 84044).

STORM WATER DRAIN NO. 272 serving Lots 1 through 12, Block 1, Cross Pointe Addition (south of 21st, east of Greenwich) (Project No. 468 84047).

DECEL LANE ON THE SOUTH SIDE OF 21ST STREET NORTH to serve the entrance between Lots 4 and 5, Block 1, Cross Pointe Addition (south of 21st, east of Greenwich) (Project No. 472 84299)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Cross Pointe Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and

to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days

following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|-------------|
| Project No. 448 90083 | \$ 5,500.00 |
| Project No. 468 84044 | \$ 7,400.00 |
| Project No. 468 84047 | \$40,000.00 |
| Project No. 472 84229 | \$ 3,400.00 |
| TOTAL | \$56,300.00 |

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

- 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
- 2. Additional design services not covered by the scope of this agreement.
- 3. Construction staking, material testing, inspection and administration related to the PROJECT.
- 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-

exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL
Carlos Mayans, City Mayor

SEAL:

ATTEST:
Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANT, P.A.
(Name & Title)

ATTEST:

EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be

responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT's plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by July 1, 2006.
(Project No. 448 90083).

b. Plan Development for the sewer improvements by July 1, 2006.
(Project No. 468 84044).

c. Plan Development for the drainage improvements by August 31, 2006.

(Project No. 468 84047).

d. Plan Development for the paving improvements by July 1, 2006.

(Project No. 472 84229).

Agenda Item No. 15f

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0869

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Legacy Park Wilson Estates
3rd Addition (south of 21st, west of Webb) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving improvements in Legacy Park Wilson Estates 3rd Addition on June 6, 2006.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of bond financed improvements consisting of paving in Legacy Park Wilson Estates 3rd Addition. Per Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of \$23,800 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS and MKEC ENGINEERING CONSULTANTS, INC. for LEGACY PARK

WILSON ESTATES 3RD ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WILSON ESTATES COURT from the north line of Wilson Estates Parkway to and including the cul-de-sac serving Lots 1 through 12, Block 1, Legacy Park Wilson Estates 3rd Addition (472 84404), Water Distribution System No. 448 90191 and Lateral 89, Main 22, War Industries Sewer (468 84181) (south of 21st, west of Webb).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Legacy Park Wilson Estates 3rd Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions

of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 472 84404 \$23,800.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

- 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
- 2. Additional design services not covered by the scope of this agreement.
- 3. Construction staking, material testing, inspection and administration related to the PROJECT.
- 4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes

of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

CONSULTANT, INC.

MKEC ENGINEERING

(Name & Title)

ATTEST:

EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 ½"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any

additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a. Plan Development for the paving improvements by 120 days from notice to proceed.

(Project No. 472 84404).

Agenda Item No. 15g

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0870

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Hawthorne 3rd Addition (north of 21st, east of 127th Street East) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water, sanitary sewer and paving improvements in Hawthorne 3rd Addition on March 1, 2005.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of bond financed improvements consisting of water, sanitary sewer and paving in Hawthorne 3rd Addition. Per Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of \$55,090 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer and paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS, and MKEC ENGINEERING CONSULTANTS, INC. for HAWTHORNE 3RD ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 89996 serving Lots 22 through 56, Block 1; Lots 1 through 14, Block 2, Hawthorne 3rd Addition (north of 21st, east of 127th Street East) (Project No. 448 89996).

LATERAL 7, MAIN 12, FOUR MILE CREEK SEWER serving Lots 32 through 36, Block 1; Lots 39 & 40, Block 1; Lots 50 through 56, Block 1; Lots 1 through 14, Block 2, Hawthorne 3rd Addition (north of 21st, east of 127th Street East) (Project No. 468 83874).

LOCH LOMOND/AYESBURY from the north line of Boxthorn to the east line of Williamsgate; BOXTHORN from the east line of Williamsgate to the east line of Loch Lomond; and LOCH LOMOND COURTS, serving Lots 27 through 44, Block 1 to and including the cul-de-sacs (north of 21st, east of 127th Street East) (Project No. 472 84084).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Hawthorne 3rd Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and

regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in

writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|--------------------|
| Project No. 448 89996 | \$ 8,940.00 |
| Project No. 468 83874 | \$ 6,900.00 |
| Project No. 472 84084 | <u>\$39,250.00</u> |
| TOTAL | \$55,090.00 |

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
 - 1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
 - 2. Additional design services not covered by the scope of this agreement.
 - 3. Construction staking, material testing, inspection and administration related to the PROJECT.
 - 4. A major change in the scope of services for the PROJECT.If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-

exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

IV. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL
Carlos Mayans, Mayor

SEAL:

ATTEST:
Karen Sublett, City Clerk

APPROVED AS TO FORM:
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.
(Name & Title)
ATTEST:

EXHIBIT "A"
SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 ½"), CD-ROM, or other media acceptable to the City

Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a. Plan Development for the water improvements by 120 days from notice to proceed.

(Project No. 448 89996).

b. Plan Development for the sewer improvements by 120 days from notice to proceed.

(Project No. 468 83874).

c. Plan Development for the paving improvements by 120 days from notice to proceed.

(Project No. 472 84084).

Agenda Item No. 15h

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0871

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Rainbow Lakes West Addition
(south of Central, east of 135th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system and sanitary sewer improvements in Rainbow Lakes West Addition on March 28, and May 9, 2006.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of the water and sanitary sewer improvements in Rainbow Lakes West Addition. The Staff Screening and Selection Committee selected Baughman for the design on June 19, 2006.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$28,500 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water and sanitary sewer improvements in an existing residential area. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in an existing residential area that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement

AGREEMENT for PROFESSIONAL SERVICES between THE CITY OF WICHITA, KANSAS and BAUGHMAN COMPANY, P.A. for RAINBOW LAKES WEST ADDITION

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That
WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYTEM NO. 448 90195 serving Lots 1 through 8, Block 1; Lots 1 through 11, Block 2, Rainbow Lakes West Addition) (south of Central, east of 135th Street West) (Project No. 448 90195).

LATERAL 39, MAIN 1, COWSKIN INTERCEPTOR SEWER serving Lots 1 through 11, Block 2, Rainbow Lakes West Addition (south of Central, east of 135th Street West) (Project No. 468 84168).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Rainbow Lakes West Addition and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

| | |
|-----------------------|-------------|
| Project No. 448 90195 | \$13,000.00 |
| Project No. 468 84168 | \$15,500.00 |
| TOTAL | \$28,500.00 |

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents

pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.
(Name & Title)

ATTEST:

EXHIBIT "A"

SCOPE OF SERVICES

WATER DISTRIBUTION SYTEM NO. 448 90195

(serving Lots 1 through 8, Block 1; Lots 1 through 11, Block 2, Rainbow Lakes West Addition) (south of Central, east of 135th Street West)

LATERAL 39, MAIN 1, COWSKIN INTERCEPTOR SEWER

(serving Lots 1 through 11, Block 2, Rainbow Lakes West Addition)
(south of Central, east of 135th Street West) (Project No. 468 84168)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.

3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.

4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept

development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

10. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

11. The Engineer shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.

12. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

a. Plan Development for the water improvements by 16 weeks.
(Project No. 448 90195).

b. Plan Development for the sewer improvements by 16 weeks.
(Project No. 468 84168).

Agenda Item No. 16a.

CITY OF WICHITA
City Council Meeting
August 15, 2006

Agenda Report No.06-0836

TO: Mayor and City Council

SUBJECT: Acquisition of a Permanent Easement for the Aquifer Storage and Recovery Project (Northwest Sedgwick County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993 the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000 City Council approved the projects and implementation of the plan.

Analysis: A major component of the Water Supply Plan is the Equus Beds Aquifer Storage and Recovery Project. To ensure the safety, reliability and longevity of the new facilities, it is necessary to improve the power lines in 119th St. W. north of 109th St. N. Currently there is only a 25-foot road right-of-way in 119th St., which is not adequate to install the improved electrical system. An additional five feet of easement is necessary from the property located in at the northeast corner of 119th St. W. and 109th St. N. The owner has agreed to convey a strip of land as an easement for the appraised amount of \$2,500.

Financial Considerations: A budget of \$2,550 is requested. \$2,500 will be used to pay the landowner for the easement and the remainder used for recording purposes.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure as this area is rapidly growing.

Legal Considerations: The easement has been approved as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the permanent easement; and 3) Authorize payment.

Agenda Item No.17.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0837

TO: Mayor and City Council

SUBJECT: Amendment of Letter of Intent (Lee Aerospace, Inc.) (District II)

INITIATED BY: City Manager's Office

AGENDA: Consent

Recommendation: Amend the Letter of Intent.

Background: On March 16, 1999 and December 2, 2003, City Council approved the issuance of Industrial Revenue Bonds in the total amount of \$4.7 million and a five-plus-five year 100% tax exemption on bond-financed property to Lee Aerospace, Inc. On June 20, 2006, City Council approved a Letter of Intent to Lee Aerospace, Inc. for Industrial Revenue Bonds in an amount not to exceed \$2,500,000.

Analysis: The intent of the application was actually to have the Letter of Intent run to Lee Real Estate, LLC. and hence a modification is necessary to accommodate that desire.

Financial Considerations: There is no financial impact to the City as a result of the amendment.

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption and sale tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The City Attorney's Office is in agreement with the change.

Recommendations/Actions: It is recommended that the City Council approve of the amendment of the Letter of Intent to change the name from Lee Aerospace, Inc. to Lee Real Estate, LLC, and authorize the necessary signatures.

Agenda Item No. 18.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0838

TO: Mayor and City Council Members

SUBJECT: Sanitary Sewer Main to serve an area along MacArthur, between
½ mile east of West Street and the Wichita-Valley Center Flood
Control Ditch (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Project.

Background: On September 14, 2004, the City Council approved a Petition submitted by the developers of Blue Lake Addition located west of West Street, north of MacArthur for their share of a future sanitary sewer main. On April 5, 2005, the City Council approved a sanitary sewer Petition for the Oatville neighborhood located adjacent to Blue Lake Addition. Resolutions have been prepared to authorize bond funding to construct the Sewer Main for Blue Lake Addition, the Oatville neighborhood and the surrounding service area.

Analysis: The project will provide sanitary sewer main service to a partially developed area along MacArthur between ½ mile east of West Street and the Wichita-Valley Center Flood Control Ditch. The existing homes in the area are served by private septic tank systems.

Financial Considerations: The estimated project cost is \$1,100,000, with \$935,000 paid by the Sewer Utility and \$165,000 assessed to the improvement district. A portion of the service area is outside the City limits and cannot be assessed at this time. Sewer Main Benefit fees will be added to future lateral sewer Petitions in the service area and will recover a large part of the Utility's share of the project cost.

Goal Impact: This project addresses the Efficient Infrastructure goal by extending sanitary sewer main service to homes with septic tank systems and a new residential subdivision.

Legal Considerations: State Statutes provide the City Council authority for the project.

Recommendation/Action: It is recommended that the City Council approve the Project, adopt the authorizing Resolution, adopt the Resolution authorizing revenue bonds,

approve the notice of intent to issue revenue bonds and authorize the necessary signatures.

Agenda Item No. 19.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0839

TO: Mayor and City Council Members

SUBJECT: Revised Resolution: Sanitary Sewer Main to serve an area generally bounded by the Wichita-Valley Center Flood Control Ditch, the Kansas Southwestern Railroad Tracks and 25th Street (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the revised Resolution.

Background: On May 4, 2004, the City Council approved a project to construct a sanitary sewer main to serve an area generally bounded by the Wichita-Valley Center Flood Control Ditch, the Kansas Southwestern Railroad Tracks and 25th Street. Since that time, the Water and Sewer Department has acquired two tracts in the improvement district as a site for a future water treatment plant. A revised resolution has been prepared that reflects the resulting increased Sewer Utility share of the project. The revised resolution also corrects several minor errors with the legal descriptions for properties in the improvement district.

Analysis: The project has been completed and serves a large area that includes both older, developed residential neighborhoods and new residential/commercial developments.

Financial Considerations: The project cost is \$843,800. The Utility share has increased from \$632,850 to \$711,630 due to the acquisition of the water treatment plant site. The remaining \$132,170 is assessed to the improvement district.

Goal Impact: This project addressed the Efficient Infrastructure goal by extending sanitary sewer main service to existing and future development.

Legal Considerations: State Statutes provide the City Council authority to increase the Sanitary Sewer Utility share of the project.

Recommendations/Actions: It is recommended that the City Council adopt the revised Resolution and authorize the necessary signatures.

AGENDA NO. 20.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0840

TO: Mayor and City Council

SUBJECT: 2007 Victims of Crime Act (VOCA) Grant (All Districts)

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the grant application.

Background: The Federal Victims of Crime Act (VOCA) Crime Victim Assistance grant program is administered by the Kansas Governor's Federal Grants Program. In 2001, the City Council approved the initial grant application for VOCA funding, which established a Victim Assistance Unit (VAU) in the Police Department, staffed by two civilian employees. These employees are responsible for providing direct victim assistance and coordination with established community resources. The Police Department's VAU staff work closely with several victim services agencies, including the Wichita Area Sexual Assault Center, YWCA Women's Crisis Shelter, Catholic Charities, U.S. Attorney's Victim Assistance Office, District Attorney's Victim/Witness staff, and Assistant District Attorneys.

Analysis: The VAU is responsible for facilitating a coordinated response to the needs of crime victims, developing and implementing training programs (internally and externally), and administering a contingency fund to meet the emergency needs of crime victims. Victim assistance is focused on the primary and secondary victims of violent crime, including death cases and elderly burglary victims. The VAU has been instrumental in working with the Wichita Police Department's violent crimes and burglary sections to assist victims with restoring stability to their lives, and aiding in the reduction of secondary victimization. The efforts of the VAU, in conjunction with other Police Department personnel, has enhanced service to victims of crime and has established trust and open communication within the community.

Financial Considerations: The grant application seeks funding for the continuation of the Victim Assistance Unit for federal FY 2007, beginning October 1, 2006 through September 30, 2007. The total budget request is \$149,804; 80% (\$119,843) to be provided by VOCA funding and a 20% (\$29,961) local match requirement, which can be funded from anticipated under expenditures in the Police Department budget or General Fund reserves.

Legal Considerations: The City Council has the authority to submit and receive the grant.

Recommendations/Actions: It is recommended that the City Council approve the grant application, authorize the necessary signatures, and approve any necessary budget transfers.

Agenda Item No. 21.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No.06-0841

TO: Mayor and City Council Members

SUBJECT: Landfill Gas System Relocation for Phase II of C&D Filling
(District VI).

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the project.

Background: The Brooks Landfill currently operates as a construction and demolition (C&D) waste landfill. The first phase of filling will be completed in the fall of this year. A second, and much larger phase, will be used upon closure of the first fill area.

Analysis: In order to maximize the air space available for Phase II of the C&D fill, it will be necessary for a portion of the existing landfill gas collection system to be relocated. Wichita Gas Producers, LLC has completed the design and specification for the relocation work, pre-qualified firms who can perform the work, and has received competitive bids for the relocation of the impacted facilities.

The City will derive all of the benefit of the relocation of these facilities as it increases the available air space for filling while continuing to provide for the effective collection of the landfill gas that is being produced from the closed municipal solid waste cells.

Bids received were received from three companies and are summarized here:

| | |
|----------|--------------|
| Company | Bid Amount |
| Shaw | \$564,945.00 |
| AEG | \$488,825.00 |
| Landmarc | \$431,802.75 |

Financial Considerations: Included in these bid amounts are the costs incurred by Wichita Gas Producers for a consulting engineering firm (Weaver Boos Consultants – LLC Southwest) to design the changes. The total cost of the project based on the low bid received is therefore \$431,802.75. This total represents the maximum amount to be paid to Wichita Gas Producers. Payment to Wichita Gas Producers will be for their actual cost and will be subject to this maximum amount.

Goal Impact: The project will address the Efficient Infrastructure Goal by maximizing the disposal capacity for construction and demolition waste in the Phase II area of the Brooks C&D Landfill.

Funds are available within the Landfill Budget for this project. The project will be reflected in the revised 2006 Landfill Budget if the project is approved by the City Council.

Legal Considerations: The Law Department has approved the Third Amendment to the Landfill Rights Agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the project to relocate a portion of the landfill gas collection system at the Brooks Landfill to allow for Phase II C&D filling operations and authorize the necessary signatures.

Agenda Item No. 22.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0842

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement and Police & Fire Retirement Systems' 2005 Comprehensive Annual Financial Report

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Receive and file the report.

Background: Since 1998, Pension Management has prepared the Comprehensive Annual Financial Report (CAFR) of the Wichita Employees' Retirement and Police & Fire Retirement Systems. The CAFR is designed to provide information needed by interested parties to gain an understanding of the financial position, results of operations, investments and actuarial positions of the Retirement Systems.

Analysis: The financial statements presented in the CAFR for the year ended December 31, 2005 have been audited by the independent certified public accounting firm of Allen, Gibbs & Houlik, L.C. and an unqualified opinion has been issued stating that the financial statements present fairly, in all material respects, the plan net assets and the changes in plan net assets in conformity with generally accepted accounting principles.

The Government Finance Officers Association (GFOA) of the United States and Canada awarded a Certificate of Achievement for Excellence in Financial Reporting to the Wichita Retirement Systems for the year ended December 31, 2004. In order to be awarded a Certificate of Achievement, a government unit must publish an easily readable and efficiently organized CAFR, with content that conforms to program standards. The 2004 award represents the sixth consecutive year in which the Wichita Retirement Systems have earned this award. Staff believes that the 2005 CAFR continues to meet GFOA standards for certification and the City has applied for this recognition

Financial Considerations: None

Goal Impact: The Internal Perspective is impacted through the fair presentation of the financial condition of the City's pension systems to the City Council, the citizens of Wichita, plan participants and other interested parties.

Legal Considerations: None

Recommendations/Actions: It is recommended that the City Council receive and file the Wichita Retirement Systems' Comprehensive Annual Financial Report for the fiscal year ended December 31, 2005.

AGENDA ITEM NO. 23.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0843

TO: Mayor and City Council
SUBJECT: Fidelity Bank Resolution
INITIATED BY: Department of Finance
AGENDA: Consent

Recommendations: Adopt the resolution and authorize the necessary signatures.

Background: The City utilizes Fidelity Bank to process and service Neighborhood Improvement Revolving Loan program transactions. This program provides loan assistance for the purposes of historic preservation, rehabilitation and restoration, as well as rehabilitation of owner-occupied and rental homes.

Analysis: Authorized staff has changed requiring update of the authorizing resolution related to the accounts held with Fidelity bank. The authorizing resolution delegates individual authority with respect to specific banking transactions to ensure the proper segregation of duties and adequate internal controls.

Financial Considerations: Banking fees associated with this program are borne by the loan participants.

Goal Impact: This action impacts the Economic Vitality/Affordable Living and Internal Perspectives through the continued services provided by Fidelity Bank and facilitation of transactions related to the Neighborhood Improvement Revolving Loan program.

Legal Considerations: The resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council adopt the resolution updating the list of individuals authorized to execute transactions with Fidelity Bank and authorize the necessary signatures.

Attachment: Authorizing Resolution

City of Wichita Authorization Resolution

By:

Fidelity Bank City of Wichita
100 E. English 332 Riverview Street
Wichita, KS 67202
Referred to as Financial Institution

Wichita, KS 67203
Referred to as Municipal Corporation

| Account Number | Account Name |
|----------------|-----------------------------------|
| 60014463 | Historical Loan Revolving Account |
| 60014471 | Direct Loan Revolving Account |
| 9060011079 | Rental Rehab Program |

I, Karen Sublett, certify that I am the City Clerk of the City of Wichita, a Municipal corporation organized under the laws of Kansas, Federal I.D. Number 48-6000653, engaged in business under the trade name of City of Wichita, and that the resolutions on this document are a correct copy of the resolutions adopted at a meeting of the Governing Body of the Corporation duly and properly called and held on _____.

These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

Agents Any agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

| Name and Title | Signature |
|--|-----------|
| A. George R. Kolb, City Manager | _____ |
| B. Kelly Carpenter, Director of Finance | _____ |
| C. Shawn S. Henning, City Treasurer | _____ |
| D. Carol F. McMillan, Controller | _____ |
| E. Terry L. Feaster, Cash Manager | _____ |

Powers Granted

Indicate number of signatures required

| | | |
|--------------------|--|---|
| A, B | Open any new deposit or share account(s) in the name of the Corporation | 2 |
| A, B, C | Endorse checks for deposit. | 1 |
| A, B | Issue orders for the payment of money or withdraw or externally transfer funds on deposit with this Financial Institution. | 2 |
| C, E | Initiate recurring wire transfers to pre-authorized City of Wichita Accounts | 1 |
| C, E | Transfer funds internally between the above authorized accounts | 1 |
| A & D or B & D. | Jointly issue instructions to establish a wire transfer template. | 2 |

Limitations on Powers – The following are the Corporation’s express limitations on the powers granted under this resolution.

Any account agreements and any other contracts or agreements beyond checks, payment orders or other transfer or withdrawal directions authorized under “Powers Granted” above are subject to approval by the Corporations Governing Body.

This resolution supersedes all prior resolutions.

Certification of Authority

I further certify that the Governing Body of the Corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions and to confer the powers granted above to the persons named who have full power and lawful authority to exercise the same. This Corporation is a non-profit corporation.

In Witness Whereof, I have subscribed my name to this document and affixed the seal of the Corporation on _____(date).

Attest by One other Officer

City Clerk

Approved as to form:
Gary Rebenstorf, City Attorney

Agenda Item No. 24

City of Wichita
City Council Meeting
August 15, 2006
Agenda Report No. 06-0844

TO: Mayor and City Council Members

SUBJECT: Safe Routes to School Federal Funding Application

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Adopt resolution and authorize necessary signatures.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) was passed in 2005. Included in this federal legislation included funding for the Safe Routes to School (SRTS) program. The SRTS program is administered through the Kansas Department of Transportation (KDOT). The program is a 100% reimbursement program intended to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption and air pollution in the vicinity of schools. These funds are available for infrastructure and non-infrastructure projects, and administrative programs that benefit elementary and middle school children in grades K-8.

Analysis: The goal of this program is to partner with area schools to facilitate the planning, development and implementation of infrastructure projects that will improve safety for students' walking/biking to school. Plans will be developed for an approximate 2-mile radius around the targeted schools.

Financial Considerations: The federal program is 100% reimbursement with no impact to the City of Wichita budget. Acceptance of the award will not obligate general fund monies.

Goal Impact: The program supports the following goals:

- Providing a Safe and Secure Community by increasing awareness and education about traveling safely to schools and providing education to drivers who navigate these areas.
- Core Area and Neighborhoods by improving safety and education of alternative methods to access schools in neighborhoods.
- Quality of Life improving the health of students encouraging walking and bicycling to schools from home.

Legal Considerations: The Department of Law has approved the resolution as to form.

Recommendations/Actions: It is recommended that the City Council adopt the resolution for application to the Safe Routes to School program and authorize the necessary signatures.

Agenda Item No. 25

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0845

TO: Mayor and City Council

SUBJECT: Safe Routes to School Application Resolution, Regional Education
Plan/Programs
(Wichita Area Metropolitan Planning Organization)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Consent

Recommendation: Adopt resolution and authorize necessary signatures.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) was passed in 2005. This federal legislation included funding for the Safe Routes to School (SRTS) program administered through the Kansas Department of Transportation (KDOT). The program is a 100 percent reimbursement program intended to enable and encourage children, including those with disabilities, to walk and bicycle to school; to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption and air pollution in the vicinity of schools. These funds are available for infrastructure and non-infrastructure projects, and administrative programs that benefit elementary and middle school children in grades K-8.

Analysis: This application by WAMPO will teach children in the region how to safely travel to and from schools from their homes and neighborhoods. Children will also be educated about the broad range of transportation choices, helping them to bicycle and walk safely to school. Drivers will also benefit from driver safety campaigns in the vicinity of schools.

Financial Considerations: The federal program is 100 percent reimbursable with no impact to the City of Wichita budget. Acceptance of the award will not obligate general fund monies.

Goal Impact: The program supports the following goals:

- Providing a Safe and Secure Community by increasing awareness and education about traveling safely to schools and providing education to drivers who navigate these areas.
- Core Area and Neighborhoods by improving safety and education of alternative methods to access schools in neighborhoods.
- Quality of Life by improving the health of students by encouraging walking and bicycling to schools from home.

Legal Considerations: The Department of Law has approved the resolution as to form.

Recommendations/Actions: It is recommended that the City Council adopt the resolution for application to the Safe Routes to School program and authorize the necessary signatures.

Attachments: Application Resolution.

RESOLUTION No. _____

A RESOLUTION DECLARING THE ELIGIBILITY OF THE CITY OF WICHITA, KANSAS, AS FISCAL AGENT FOR WICHITA AREA METROPOLITAN PLANNING ORGANIZATION (WAMPO), TO SUBMIT AN APPLICATION TO THE KANSAS DEPARTMENT OF TRANSPORTATION FOR USE OF SAFE ROUTES TO SCHOOLS FUNDS SET FORTH BY SAFETEA-LU FOR THE WAMPO SAFE ROUTES TO SCHOOL PLAN PROJECT IN THE WAMPO PLANNING AREA AND AUTHORIZING THE CITY OF WICHITA TO SUBMIT THE APPLICATION.

Whereas, the City of Wichita, Kansas, as fiscal agent for the Wichita Area Metropolitan Planning Organization, has the legal authority to apply for, receive, and administer federal, state, and other monies through Home Rule Power under the Constitution of the State of Kansas and authorized by K.S.A. 12-1662, regarding the expenditure of federal aid to public agencies; and

Whereas, the Wichita Area Metropolitan Planning Organization, desires to submit an application to the Kansas Department of Transportation for Safe Routes to Schools funds set forth by SAFETEA-LU; and

Whereas, the Wichita Area Metropolitan Planning Organization, is participating in the Kansas Department of Transportation's Safe Routes to Schools program set forth by SAFETEA-LU; and

Whereas, Federal monies are available under a Safe Routes to Schools program set forth by SAFETEA-LU, administered by the State of Kansas, Department of Transportation, for the purpose of creating safer routes to schools in Kansas; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the City of Wichita, Kansas, as fiscal agent for the Wichita Area Metropolitan Planning Organization, does hereby authorize the submission of an application to the Kansas Department of Transportation for Safe Routes to Schools program funds set forth by SAFETEA-LU.

SECTION 2. That the City of Wichita, Kansas, as fiscal agent for the Wichita Area Metropolitan Planning Organization, hereby assures the Kansas Department of Transportation that sufficient funding for the WAMPO Safe Routes to School Plan project is available, as the Safe Routes to Schools Program is a reimbursement program.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this
date

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:
Gary E. Rebenstorf, City Attorney

Agenda Item No. 26.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0846

TO: Mayor and City Council

SUBJECT: Abatement of Dangerous & Unsafe Structures (Districts I, III, IV & V)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendation: Approve the assessments and ordinance.

Background: The Office of Central Inspection (OCI) supports neighborhood maintenance and improvement through abatement of public nuisances under Titles 18 and 20 of the City Code. State law and local ordinances allow the City to demolish or board up and secure private property that is in violation of Housing and Building Code standards, after proper notification of the responsible party/parties. A private contractor, or City staff performs the work, and the Office of Central Inspection bills the cost to the property owner.

Analysis: State law and City ordinance allow placement of the demolition and board-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the demolition and board up abatements in question, and OCI is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Statements of Charges will be mailed to the property owners on August 25, 2006. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the July 2006 bonds sold. The principal and interest will then be spread for 1-year and placed on the 2006 tax roll.

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Continued revitalization of the Core Area. Dangerous building condemnation actions, including demolitions and emergency property board-ups, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The assessments are in accordance with City Code 18.16.070, 18.16.080 and 18.16.090.

Recommendations/Actions: It is recommended that the City Council approve the proposed assessments and place the ordinance on first reading.

Attachments:

| Property List – Special Assessments | | Office of Central Inspection | | Amount |
|-------------------------------------|---------------------------|------------------------------|-----|--------|
| District # | | | | |
| 1858 N Pennsylvania | demolition (condemnation) | \$500.00 | I | |
| 1421 West Burton | emergency board-up | \$2,747.00 | IV | |
| 1223 North Ohio | gas services removal | \$160.65 | I | |
| 417 West Funston | gas services removal | \$160.65 | III | |
| 1448 North Chautauqua | emergency board-up | \$100.90 | I | |
| 1242 North Volutsia | emergency board-up | \$61.12 | I | |
| 212 North Madison | emergency board-up | \$63.59 | I | |
| 1531 North Minnesota | emergency board-up | \$71.59 | I | |
| 2612 East 13th | emergency board-up | \$71.37 | I | |
| 1727 North Ash | emergency board-up | \$73.06 | I | |
| 2535 North Chautauqua | emergency board-up | \$89.57 | I | |
| 2320 North Volutsia | emergency board-up | \$3,697.00 | I | |
| 2316 North Green | emergency board-up | \$501.84 | I | |
| 4031 East Stearman | emergency board-up | \$165.20 | III | |
| 1911 South Pattie | emergency board-up | \$72.91 | III | |
| 4211 East Gilbert | emergency board-up | \$223.37 | III | |
| 7412 West Hale | emergency board-up | \$181.59 | V | |
| 1218 North Cleveland | demolition (condemnation) | \$4,712.85 | I | |
| Total | | \$13,654.26 | | |

Agenda Item 28.

This Item Pulled per Law Department

Agenda Item No. 29

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0848

TO: Mayor and City Council

SUBJECT: 2007 Annual Operating Budget and Revisions to the 2006 Budget

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendations: Approve water/sewer rate increases, Golf course fee increases, the 2007 proposed and 2006 amended budgets, and City-County joint agreements.

Background: The 2007/2008 Proposed Budget has been presented to the City Council, including presentations at workshops and at District Advisory Board (DAB) meetings. Additional presentations have included separate discussions involving proposed increases in Water and Sewer rates and Golf course fees. The City Council has received public comments on the proposed 2007/2008 budget, both formally at regular meetings of the Council and informally at each of the City's DABs. On July 18, 2006, the City Council placed the budget ordinances on first reading and authorized the publication of the hearing notices, establishing the maximum taxes levied for the 2007 City budgets.

Analysis: 2007 Operating Budget. The proposed 2007 annual operating budget was officially published at \$485,102,402 – including all Tax Increment Financing (TIF) Funds and the Self-Supporting Municipal Improvement District (SSMID) Fund. Interfund transactions and appropriated reserves increase this amount to \$582,537,352. The inclusion of expendable trust funds, as required by law, is an additional \$59,752,780 for a total of \$642,290,132. The estimated mill levy for this budget would be 31.898 mills, no change from the levy for the current 2006 Adopted Budget.

The General Fund property tax levy is \$62,159,930 (including a delinquency allowance) at an estimated 21.898 mills. The levy for the Debt Service Fund is \$28,386,130 (including a delinquency allowance) and is estimated at 10.000 mills. The total tax levy is \$90,546,060.

There are a total of seven TIF Funds, two environmental TIFs (Gilbert & Mosley and North Industrial Corridor) and five economic development TIFs (East Bank, Old Town, 21st & Grove, Central & Hillside, and Old Town Cinema). The combined resources of the seven TIF Funds is \$7,459,120, of which \$6,579,910 is derived from property tax increments.

The SSMID Fund is included in the proposed budget assuming mill levy rate of 5.950 mills and a delinquency factor of 3%, the new valuation projections would result in \$579,210 revenue net of delinquency in fiscal year 2007 (2006 taxes levied). Factoring revenue from prior year

delinquencies (\$12,070) and motor vehicle tax revenue (\$22,410) results in a total of \$613,690.

Jointly Funded Budgets. The General Fund includes City of Wichita contributions to the jointly funded City County budgets, as identified in the table below.

| 2007 Proposed Budget | City | County | Revenue | Total |
|-----------------------------------|-------------|---------------|----------------|--------------|
| Flood Control | 809,040 | 809,040 | 0 | 1,618,080 |
| Metropolitan Area Planning | 761,570 | 761,570 | 282,950 | 1,806,090 |

It is necessary for the City Council to approve joint agreements to continue these functions. The County Commission is expected to likewise approve the County share of these functions.

The 2007/2008 Proposed Budget also contains projected increases for Water Utility rates and Sewer Utility rates, and the Golf Course fee increase.

Rate pressures in the Water and Sewer Utilities are driven almost exclusively by capital needs associated with major investments. These investments ensure the Utilities are able to keep pace with growth in the metropolitan area and guarantee a reliable source of water for the community through the year 2050. The proposed annual rate increases are 3% and 7% for the Water Service and Sanitary Sewer, respectively, effective January 1, 2007.

An increase in golf fees (\$1 on weekdays and \$2 on weekends) for MacDonald, LW Clapp, Consolver and Sim Golf Courses is included, effective October 1, 2006. The increase will not impact play at Auburn Hills and senior rates or junior golf fees.

2006 Revised Budget. In addition to action on the 2007 Budget, it is requested that action be taken to amend the 2006 Adopted Budget – as contained in the proposed budget submitted to the City Council:

1. The Economic Development Fund increase of \$2,808,090 is due primarily to the \$987,500 funding for affordable air service and increases for proposed incentives, to provide flexibility for opportunity uses of these funds.
2. The Special Alcohol Programs Fund increase of \$168,430 is due to additional revenues received from state transfers of liquor tax funds, which will allow additional drug and alcohol treatments programming to be funded.
3. The Ice Rink Management Fund increase of \$160,220, based on projected increases in program activity at the Ice Rink. All increased expenditures are offset by increased revenue.
4. The Water Utility Fund increase of \$2,188,490 is due to accelerated replacement of the utility billing system (which also increases the charge to the Sewer Utility), higher debt service costs due to a larger-than-anticipated bond sale, and a larger inventory account. The inventory account will be significantly reduced at year-end as inventoried parts are charged to appropriate project accounts.
5. The Sewer Utility Fund increase of \$353,530 reflects the cumulative effect of several smaller increases, including higher utility billing system costs, additional pump replacement parts, backflow preventers for areas of repeated sewer backups, and increased charges from the Water Utility.

Financial Considerations: Publication of the notice of formal hearing on August 4 set the maximum dollars that may be expended in each fund. The City Council may reduce expenditures required (and proposed tax dollars to be levied) but not increase expenditures previously established and published.

Approval of the proposed rate increases in the Water and Sewer Utilities will financially provide for the projects identified in the City's Adopted Capital Improvement Program (CIP) and sustain all current operations.

Goal Impact: The adoption of the annual budget provides a funding plan for services each of the five goal areas.

Legal Considerations: Publication requirements of State law for the final (formal) public hearing have been met. Appropriate disclosure is included within the ordinance of property tax increases not related to assessed value added by improvements, appreciating personal property and/or annexation. Following final Council action on the proposed budget, proper certification will be made of the property taxes to be levied in conformity with State law.

Recommendation: It is recommended that the City Council close the public hearing and:

- (1) Approve the 2007 budgets (with the changes reflected in attachment A) and adopt the necessary budget ordinances, including those for the tax increment financing (TIF) districts and the self-supporting municipal improvement district (SSMID);
- (2) Approve amending the 2006 budget for the Economic Development, Special Alcohol Programs, Ice Rink Management, Water Utility and Sewer Utility funds;
- (3) Approve the joint agreements with Sedgwick County;
- (4) Approve the proposed new schedule of rates and charges for Water Service and place the ordinance on first reading;
- (5) Approve the proposed new schedule of rates for users of the Sanitary Sewer system and place the ordinance on first reading;
- (6) Approve the golf green fee increases; and
- (7) Approve the use of local funds derived from property within the corporate limits for the Wichita State University Board of Trustees (Interlocal Agreement between the City and County).

Attachments:

Attachment A – Changes to the City Manager's Proposed 2007/2008 Budget
Joint Agreement – Wichita-Sedgwick County Metropolitan Planning Department
Joint Agreement – Wichita-Sedgwick County Flood Control
Ordinance – schedule of rates charges for Water Service
Ordinance – schedule rates for users of the Sanitary Sewer System

Attachment A

Changes to the City Manager's Proposed 2007/2008 Budget

| <u>Item</u> | <u>Budget page</u> | <u>2006 revised</u> | <u>2007 Proposed</u> | <u>2008 Projected</u> |
|-----------------------|--------------------|---------------------|----------------------|-----------------------|
| Fire Station staffing | 12 | -0- | -0- | \$ 734,000 |
| Planned Savings | 6 | <u>-0-</u> | <u>-0-</u> | <u>(734,000)</u> |
| Net Change | | <u>-0-</u> | <u>-0-</u> | <u>-0-</u> |

DELINEATED SANITARY SEWER ORDINANCE

AN ORDINANCE AMENDING SECTION 16.14.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO THE SCHEDULE OF RATES FOR USERS OF THE SANITARY SEWER SYSTEM, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 16.14.040 of the Code of the City of Wichita is amended to read as follows:

"Schedule of Use Charges. Each user of the sewerage system of the City shall pay, for the use of such system, sewer charges, at no less than monthly intervals, based where possible upon the consumption of water by such user as recorded by the water meter or sewer meter serving the premises according to the classifications and schedule set forth in this Section.

Where any commercial or industrial premises are connected with the City's sewerage system but are not served by the City's water utility system, the owner or occupant of such premises shall, at their own expense, install and maintain on such premises a water meter or meters of a type and at a location acceptable to the Director of Water and Sewer of the City, which meter shall measure all water received on said premises from all sources and the sewer services charge of said premises as prescribed in this section shall be based upon such meter recording. The City shall install equipment to automate the reading of said meters. The City shall charge a one time installation fee based upon

meter size for the purpose of administrative and replacement costs. A sewage meter, as set forth in the following sub-section of this section, may be substituted for the water meter requirement.

SEWER SERVICE VOLUME BASE:

If a commercial or industrial user desires to establish eligibility for a sewer service volume base of less than one hundred percent (100%) of water consumption, said user must submit an application in writing to the Water and Sewer Utility. Upon approval the customer shall authorize the City to install the following at the Customer's expense:

(a) A sewage meter acceptable to the Director of Water and Sewer to measure the volume of liquid actually discharged into the sewerage system from their premises. The City may install devices to automate the reading process. The City will be responsible for calibration and maintenance to ensure the accuracy of the measurements. Selected meters shall be capable of measuring flows with a maximum deviation of less than ten percent from true discharge rates throughout the range of expected discharges. The City shall arrange for certified calibrations of the flow measurement devices at least once a year. Calibration records shall be maintained by the City for a period of five years. No meter shall be installed on wastewater discharged until approval has been obtained from the Director of Water and Sewer Department or his duly authorized representative. Tampering with, injuring or removing meters, without written permission from the Director of the Department of Water and Sewer or his duly authorized representative is prohibited. In the event a sewage meter is installed, the rate schedule, as set forth in this chapter, shall be applied to

- (1) The volume of sewage entering the sanitary sewer as measured by the meter.
- (2) In the event of a meter malfunction, the City shall be responsible for repairs.

(b) In lieu of sewage meter(s), the user may request installation of auxiliary water meter(s) to measure that portion of water consumed, which is diverted from entering the sanitary sewer. In the event an auxiliary water meter is installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water consumed before the sewer service charge rate schedule is applied. The City may install meters and charge the customer for the meter, installation fees and a monthly fee based on the size of the meter.

No credits for sewer use shall be given until the type and location of meters installed has been approved by the Director of Water and Sewer or his duly authorized representative.

Sewer volume credits established in accordance with the provisions of this Section for commercial and industrial users shall be prospective only.

EXTRA STRENGTH CHARGE:

Sewage discharged to the sanitary sewer system from each industrial or commercial user shall be subject to an extra strength charge when the biochemical oxygen demand (BOD) concentration exceeds two hundred fifty milligrams per liter, the suspended solids (SS) exceeds a concentration of three hundred milligrams per liter, or the oil and grease concentration exceeds one hundred milligrams per liter, as determined by Environmental Protection Agency Methodology stipulated in 40 CFR Part 136 analysis procedures. Sample collection methodology will be as specified by the Director of Water & Sewer. Extra strength charges shall be calculated according to the formula:

$$S = V.(0.00832) (X(\text{BOD}-250) + Y(\text{SS}-300) + Z(\text{O\&G}-100))$$

Where:

S = Extra strength charge in dollars

V. = Sewage volume in thousands of gallons

0.00832 = Conversion factor for thousands of gallons to million
pounds

X = Applicable unit charge for BOD in dollars per pound from
the schedule below

BOD = BOD strength index in parts per million by weight or mg/l

250 = Allowable BOD strength under normal volume charges in
parts per million by weight or mg/l

Y = Applicable unit charge for suspended solids in dollars
per pound from the schedule below

SS = Suspended solids strength index in parts per million by weight
or mg/l

300 = Allowable suspended solids strength under normal volume
charges in parts per million by weight or mg/l

Z = Applicable unit charge for oil and grease in dollars per
pound from the schedule below

O&G = Oil and grease index in parts per million by weight or
mg/l

100 = Allowable oil and grease under normal volume charges in
parts per million by weight or mg/l

EXTRA STRENGTH UNIT CHARGES ESTABLISHED AS SHOWN IN SCHEDULE
BELOW:

| Inside City | Charge Per Pound | |
|-------------------------|-------------------------------|----------|
| | <u>2006-2007 & Beyond</u> | |
| BOD | \$0.1064 | \$0.1138 |
| Suspended Solids | -0.0709 | 0.0759 |
| Grease | 1.3817 | 1.4784 |
| Outside City | | |
| BOD | \$0.1702 | \$0.1822 |
| Suspended Solids | 0.1134 | 0.1214 |
| Grease | 2.2108 | 2.3655 |

TOXIC POLLUTANT CHARGE:

Discharging of any toxic pollutants is prohibited under City Code Section 17.20.060. If any such waters or wastes enter into the municipal sewer system, which cause an increase in the cost of managing the effluent or the sludge from the City's treatment plants and/or collection system, the discharger shall pay for the increased costs, and will be subject to the penalties ascribed in Chapter 17.20.

WASTEWATER ANALYSIS:

Samples and measurements will be taken by the City, as required by the Director of Water and Sewer, or their authorized representative. The strength of the sewage discharge by the industrial or commercial user, will be determined by the analyses of said samples.

The user, at its expense, may be required at the sole discretion of the Director of Water and Sewer to provide monitoring and flow measurement facilities which coincide at the point at which effluent limits apply. Sampling locations must be safe, convenient, and accessible to the industrial user and Water & Sewer Department personnel.

If any industrial or commercial user chooses not to accept the analytical determination made by the City for a billing period, such user shall, prior to the date on which payment of the charges for such billing is due, notify the

Director of Water and Sewer in writing and, at their sole expense, employ an independent laboratory which is certified by the Kansas Department of Health and Environment and acceptable to the Director of Water and Sewer, to conduct sampling and analysis of their sewage.

The time period, location and method for the collection of the samples shall be designated by the City. The City and the independent laboratory shall both preside over the collection of the samples and shall equally divide the samples so that duplicate analysis may be performed.

If results of the analysis of the sewage sample made by both the City and the independent laboratory are not comparable, the Director of Water and Sewer may appoint a second independent laboratory certified by the Kansas Department of Health and Environment to analyze the sewage. The sampling procedures used will be the same as those outlined above. The results of these analyses, together with the previous results, shall be used to determine the actual extra strength charges for the subject billing period. The fee for the second independent laboratory analyses shall be paid for by the user.

MONITORING CHARGE:

When regulations, either Federal, State or City, require monitoring of the waste from an industry, that industry shall pay a monitoring charge.

The monitoring charge shall consist of all costs for personnel, material and equipment used to collect and analyze samples from the user's wastewater. The exact charge shall be based on actual costs and shall be determined by the Director of Water and Sewer.

REVIEW OF USER CHARGE RATE STRUCTURE:

The user charge rate schedule of the City shall be reviewed and adjusted at least biennially to:

- (a) Maintain the proportional distribution of operation, maintenance and replacement costs among user classes.
- (b) Provide adequate revenues to cover operation, maintenance and replacement and debt service costs.

SEWER RATES AND CHARGES

On and after January 1, ~~2006~~ 2007, the schedule of rates and charges as set forth below shall apply to all categories of sewer customers.

Inside City Rates

A. Base Service Charges
Monthly charges based on water meter size

| | Charges <u>Size</u> | <u>2006</u> | <u>2007 & Beyond</u> |
|------------|------------------------|------------------|--------------------------|
| 5/8 inch | \$ 3.36 | \$3.59 | |
| 3/4 inch | | 3.67 | 3.93 |
| 1 inch | | 4.66 | 4.98 |
| 1 1/2 inch | | 6.03 | 6.45 |
| 2 inch | | 9.69 | 10.37 |
| 3 inch | | 36.77 | 39.35 |
| 4 inch | _____ | 46.78 | 50.05 |
| 6 inch | | 70.20 | 75.11 |
| 8 inch | 96.93 | 103.71 | |
| 10 inch | 113.65 | 121.60 | |
| 12 inch | 150.42 | 160.95 | |

B. Volume Charges (per 1,000 gallons of metered water consumption)

| | Rate/thousand gallons |
|-------------|--------------------------|
| <u>2006</u> | <u>2007 & Beyond</u> |
| | \$1.62 \$1.73 |

Outside City Rate

A. Base Service Charges
Monthly charges based on water meter size

| | Charges <u>Size</u> | <u>2006</u> | <u>2007 & Beyond</u> |
|------------|------------------------|-------------------|--------------------------|
| 5/8 inch | \$ | 5.37 | \$ 5.75 |
| 3/4 inch | | 5.88 | 6.29 |
| 1 inch | | 7.45 | 7.97 |
| 1 1/2 inch | | 9.65 | 10.33 |
| 2 inch | | 15.51 | 16.59 |
| 3 inch | | 58.83 | 62.95 |
| 4 inch | | 74.85 | 80.09 |
| 6 inch | | 112.32 | 120.18 |
| 8 inch | | 155.08 | 165.94 |
| 10 inch | | 181.83 | 194.56 |
| 12 inch | | 240.67 | 257.51 |

B. Volume Charges(per 1,000 gallons of metered water consumption)

| | Rate/thousand gallons |
|-------------|--------------------------|
| <u>2006</u> | <u>2007 & Beyond</u> |

| | | |
|--|-------------------|--------|
| | \$2.59 | \$2.77 |
|--|-------------------|--------|

C. Flat Rate Charges

Inside City

Monthly rates as at set forth below
shall apply to all customers without
water or sewer meters.

| | | |
|--|--------------------|---------|
| | \$14.62 | \$15.64 |
|--|--------------------|---------|

Outside City

Monthly rates as at set forth below
shall apply to all customers without
water or sewer meters.

| | | |
|--|--------------------|---------|
| | \$23.39 | \$25.02 |
|--|--------------------|---------|

D. WHOLESALE RATES

| | | |
|----------------------------|-------------------|---------|
| Monthly, per 1,000 gallons | \$1.18 | \$ 1.26 |
|----------------------------|-------------------|---------|

All users subject to sewer charges shall be subject to the provisions of this chapter.

GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY:

Government military facilities located outside the city of Wichita shall be charged inside city rates for sewer service.

SECTION 2. The original of Section 16.14.040 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after January 1, ~~2006~~ 2007, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2006.

Carlos Mayans, Mayor
City of Wichita

ATTEST:

Karen Sublett,
City Clerk

Approved as to Form:

Gary E. Rebenstorf,
Director of Law

SANITARY SEWER ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 16.14.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO THE SCHEDULE OF RATES FOR USERS OF THE SANITARY SEWER SYSTEM, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 16.14.040 of the Code of the City of Wichita is amended to read as follows:

"Schedule of Use Charges. Each user of the sewerage system of the City shall pay, for the use of such system, sewer charges, at no less than monthly intervals, based where possible upon the consumption of water by such user as recorded by the water meter or sewer meter serving the premises according to the classifications and schedule set forth in this Section.

Where any commercial or industrial premises are connected with the City's sewerage system but are not served by the City's water utility system, the owner or occupant of such premises shall, at their own expense, install and maintain on such premises a water meter or meters of a type and at a location acceptable to the Director of Water and Sewer of the City, which meter shall measure all water received on said premises from all sources and the sewer services charge of said premises as prescribed in this section shall be based upon such meter recording. The City shall install equipment to automate the reading of said meters. The City shall charge a one time installation fee based upon meter size for the purpose of administrative and replacement costs. A sewage meter, as set forth in the following sub-section of this section, may be substituted for the water meter requirement.

SEWER SERVICE VOLUME BASE:

If a commercial or industrial user desires to establish eligibility for a sewer service volume base of less than one hundred percent (100%) of water consumption, said user must submit an application in writing to the Water and Sewer Utility. Upon approval the customer shall authorize the City to install the following at the Customer's expense:

(a) A sewage meter acceptable to the Director of Water and Sewer to measure the volume of liquid actually discharged into the sewerage system from their premises. The

City may install devices to automate the reading process. The City will be responsible for calibration and maintenance to ensure the accuracy of the measurements. Selected meters shall be capable of measuring flows with a maximum deviation of less than ten percent from true discharge rates throughout the range of expected discharges. The City shall arrange for certified calibrations of the flow measurement devices at least once a year. Calibration records shall be maintained by the City for a period of five years. No meter shall be installed on wastewater discharged until approval has been obtained from the Director of Water and Sewer Department or his duly authorized representative. Tampering with, injuring or removing meters, without written permission from the Director of the Department of Water and Sewer or his duly authorized representative is prohibited. In the event a sewage meter is installed, the rate schedule, as set forth in this chapter, shall be applied to

(1) The volume of sewage entering the sanitary sewer as measured by the meter.

(2) In the event of a meter malfunction, the City shall be responsible for repairs.

(b) In lieu of sewage meter(s), the user may request installation of auxiliary water meter(s) to measure that portion of water consumed, which is diverted from entering the sanitary sewer. In the event an auxiliary water meter is installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water consumed before the sewer service charge rate schedule is applied. The City may install meters and charge the customer for the meter, installation fees and a monthly fee based on the size of the meter.

No credits for sewer use shall be given until the type and location of meters installed has been approved by the Director of Water and Sewer or his duly authorized representative.

Sewer volume credits established in accordance with the provisions of this Section for commercial and industrial users shall be prospective only.

EXTRA STRENGTH CHARGE:

Sewage discharged to the sanitary sewer system from each industrial or commercial user shall be subject to an extra strength charge when the biochemical oxygen demand (BOD) concentration exceeds two hundred fifty milligrams per liter, the suspended solids (SS) exceeds a concentration of three hundred milligrams per liter, or the oil and grease concentration exceeds one hundred milligrams per liter, as determined by Environmental Protection Agency Methodology stipulated in 40 CFR Part 136 analysis procedures. Sample collection methodology will be as specified by the Director of Water & Sewer. Extra strength charges shall be calculated according to the formula:

$$S = V.(0.00832) (X(\text{BOD}-250) + Y(\text{SS}-300) + Z(\text{O\&G}-100))$$

Where:

S = Extra strength charge in dollars

V. = Sewage volume in thousands of gallons

0.00832 = Conversion factor for thousands of gallons to million
pounds

X = Applicable unit charge for BOD in dollars per pound from
the schedule below

BOD = BOD strength index in parts per million by weight or mg/l

250 = Allowable BOD strength under normal volume charges in
parts per million by weight or mg/l

Y = Applicable unit charge for suspended solids in dollars
per pound from the schedule below

SS = Suspended solids strength index in parts per million by weight
or mg/l

300 = Allowable suspended solids strength under normal volume
charges in parts per million by weight or mg/l

Z = Applicable unit charge for oil and grease in dollars per
pound from the schedule below

O&G = Oil and grease index in parts per million by weight or
mg/l

100 = Allowable oil and grease under normal volume charges in
parts per million by weight or mg/l

EXTRA STRENGTH UNIT CHARGES ESTABLISHED AS SHOWN IN SCHEDULE
BELOW:

| Inside City | Charge Per Pound | <u>2007 & Beyond</u> |
|------------------|------------------|--------------------------|
| | | |
| BOD | \$0.1138 | |
| Suspended Solids | 0.0759 | |
| Grease | | 1.4784 |

Outside City

| | |
|------------------|----------|
| BOD | \$0.1822 |
| Suspended Solids | 0.1214 |
| Grease | 2.3655 |

TOXIC POLLUTANT CHARGE:

Discharging of any toxic pollutants is prohibited under City Code Section 17.20.060. If any such waters or wastes enter into the municipal sewer system, which cause an increase in the cost of managing the effluent or the sludge from the City's treatment plants and/or collection system, the discharger shall pay for the increased costs, and will be subject to the penalties ascribed in Chapter 17.20.

WASTEWATER ANALYSIS:

Samples and measurements will be taken by the City, as required by the Director of Water and Sewer, or their authorized representative. The strength of the sewage discharge by the industrial or commercial user, will be determined by the analyses of said samples.

The user, at its expense, may be required at the sole discretion of the Director of Water and Sewer to provide monitoring and flow measurement facilities which coincide at the point at which effluent limits apply. Sampling locations must be safe, convenient, and accessible to the industrial user and Water & Sewer Department personnel.

If any industrial or commercial user chooses not to accept the analytical determination made by the City for a billing period, such user shall, prior to the date on which payment of the charges for such billing is due, notify the Director of Water and Sewer in writing and, at their sole expense, employ an independent laboratory which is certified by the Kansas Department of Health and Environment and acceptable to the Director of Water and Sewer, to conduct sampling and analysis of their sewage.

The time period, location and method for the collection of the samples shall be designated by the City. The City and the independent laboratory shall both preside over the collection of the samples and shall equally divide the samples so that duplicate analysis may be performed.

If results of the analysis of the sewage sample made by both the City and the independent laboratory are not comparable, the Director of Water and Sewer may appoint a second independent laboratory certified by the Kansas Department of Health and Environment to analyze the sewage. The sampling procedures used will be

the same as those outlined above. The results of these analyses, together with the previous results, shall be used to determine the actual extra strength charges for the subject billing period. The fee for the second independent laboratory analyses shall be paid for by the user.

MONITORING CHARGE:

When regulations, either Federal, State or City, require monitoring of the waste from an industry, that industry shall pay a monitoring charge.

The monitoring charge shall consist of all costs for personnel, material and equipment used to collect and analyze samples from the user's wastewater. The exact charge shall be based on actual costs and shall be determined by the Director of Water and Sewer.

REVIEW OF USER CHARGE RATE STRUCTURE:

The user charge rate schedule of the City shall be reviewed and adjusted at least biennially to:

(a) Maintain the proportional distribution of operation, maintenance and replacement costs among user classes.

(b) Provide adequate revenues to cover operation, maintenance and replacement and debt service costs.

SEWER RATES AND CHARGES

On and after January 1, 2007, the schedule of rates and charges as set forth below shall apply to all categories of sewer customers.

Inside City Rates

A. Base Service Charges Monthly charges based on water meter size

| | <u>Charges</u> <u>Size</u> | <u>2007 & Beyond</u> |
|------------|-------------------------------|--------------------------|
| 5/8 inch | \$ 3.59 | |
| 3/4 inch | | 3.93 |
| 1 inch | | 4.98 |
| 1 1/2 inch | | 6.45 |
| 2 inch | | 10.37 |
| 3 inch | | 39.35 |
| 4 inch | | 50.05 |
| 6 inch | | 75.11 |
| 8 inch | 103.71 | |
| 10 inch | 121.60 | |
| 12 inch | 160.95 | |

B. Volume Charges (per 1,000 gallons of metered water consumption)

| | Rate/thousand gallons |
|--------------------------|-----------------------|
| <u>2007 & Beyond</u> | |
| | \$1.73 |

Outside City Rate

A. Base Service Charges
Monthly charges based on water meter size

| | Charges | | <u>2007 & Beyond</u> |
|------------|-------------|----|--------------------------|
| | <u>Size</u> | | |
| | 5/8 inch | \$ | 5.75 |
| | 3/4 inch | | 6.29 |
| | 1 inch | | 7.97 |
| 1 1/2 inch | | | 10.33 |
| | 2 inch | | 16.59 |
| | 3 inch | | 62.95 |
| | 4 inch | | 80.09 |
| | 6 inch | | 120.18 |
| | 8 inch | | 165.94 |
| | 10 inch | | 194.56 |
| | 12 inch | | 257.51 |

B. Volume Charges(per 1,000 gallons of metered water consumption)

| | Rate/thousand gallons |
|--------------------------|-----------------------|
| <u>2007 & Beyond</u> | |
| | \$2.77 |

C. Flat Rate Charges

Inside City

| | |
|---|---------|
| Monthly rates as at set forth below shall apply to all customers without water or sewer meters. | \$15.64 |
|---|---------|

Outside City

| | |
|---|---------|
| Monthly rates as at set forth below shall apply to all customers without water or sewer meters. | \$25.02 |
|---|---------|

D. **WHOLESALE RATES**
Monthly, per 1,000 gallons \$1.2 All users subject to sewer charges
shall be subject to the provisions of this chapter.

GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY:

Government military facilities located outside the city of Wichita shall be charged inside city rates for sewer service.

SECTION 2. The original of Section 16.14.040 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after January 1, 2007, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2006.

Carlos Mayans, Mayor
City of Wichita

ATTEST:
Karen Sublett
City Clerk

Approved as to Form:
Gary E. Rebenstorf,
Director of Law

DELINEATED WATER RATES AND CHARGES ORDINANCE

DELINEATED ORDINANCE

AN ORDINANCE AMENDING SECTION 17.12.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SCHEDULE OF RATES AND CHARGES FOR WATER SERVICE, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 17.12.090 of the Code of the City of Wichita is hereby amended to read as follows:

WATER RATES AND CHARGES. On and after January 1, ~~2006~~ 2007, the schedule of rates and charges as set forth below shall apply to all categories of water customers with metered, flat rate or fire protection services:

I. MINIMUM WATER SERVICE CHARGES

Minimum water service charges per monthly billing period, based on water service sizes, shall be assessed to all customers who have service availability at any time during a billing period as shown below. An individual is deemed to have service available if the private water service system, at the individual's residence or business, has been connected to the City of Wichita's water system at any time during a billing period. The minimum charge is to be applied regardless of whether or not any water volume passed from the City to private water systems during a billing period. Water service connections deemed inactive by the Director of Water & Sewer shall not be assessed minimum water service charges.

A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | | <u>2006 2007 & Beyond</u> | |
|---------------------------------|------------------|--------------------------------------|--------|
| 5/8 inch | | \$5.57 | \$5.74 |
| 3/4 inch | | 5.62 | 5.79 |
| 1 inch | 5.80 | 5.97 | |
| 1 1/2 inch | 6.04 | 6.22 | |
| 2 inch | 6.67 | 6.87 | |
| 3 inch | 11.44 | 11.79 | |
| 4 inch | 13.21 | 13.61 | |

| | | |
|---------|------------------|-------|
| 6 inch | 17.33 | 17.85 |
| 8 inch | 22.03 | 22.69 |
| 10 inch | 24.99 | 25.74 |
| 12 inch | 31.47 | 32.41 |

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | <u>2006</u> | <u>2007 & Beyond</u> |
|--------------------------|--------------------|--------------------------|
| 5/8 inch | \$ 8.91 | 9.18 |
| 3/4 inch | 8.99 | 9.26 |
| 1 inch | 9.28 | 9.56 |
| 1 1/2 inch | 9.66 | 9.95 |
| 2 inch | 10.67 | 10.99 |
| 3 inch | 18.31 | 18.86 |
| 4 inch | 21.14 | 21.77 |
| 6 inch | 27.72 | 28.56 |
| 8 inch | 35.25 | 36.31 |
| 10 inch | 39.99 | 41.19 |
| 12 inch | 50.34 | 51.86 |

B. FLAT RATE/UNMETERED MONTHLY CHARGES

| <u>2006</u> | <u>2007 & Beyond</u> |
|--------------------|--------------------------|
| \$12.14 | 12.51 |

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | <u>2006</u> | <u>2007 & Beyond</u> |
|--------------------------|-------------------|--------------------------|
| 5/8 inch | \$.75 | .77 |
| 3/4 inch | .77 | .79 |
| 1 inch | .87 | .89 |
| 1 1/2 inch | 1.03 | 1.07 |
| 2 inch | 1.43 | 1.47 |
| 3 inch | 4.36 | 4.49 |
| 4 inch | 5.45 | 5.61 |
| 6 inch | 7.99 | 8.23 |
| 8 inch | 10.88 | 11.20 |
| 10 inch | 12.68 | 13.06 |
| 12 inch | 16.68 | 17.18 |

OUTSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | | <u>2006 2007 & Beyond</u> | |
|--------------------------|------------------|-------------------------------|-------|
| 5/8 inch | | \$1.19 | 1.23 |
| 3/4 inch | | 1.23 | 1.27 |
| 1 inch | | 1.39 | 1.43 |
| 1 1/2 inch | | 1.66 | 1.71 |
| 2 inch | | 2.29 | 2.36 |
| 3 inch | 6.97 | 7.18 | |
| 4 inch | 8.72 | 8.98 | |
| 6 inch | 12.78 | 13.17 | |
| 8 inch | | 17.40 | 17.93 |
| 10 inch | 20.29 | 20.90 | |
| 12 inch | | 26.68 | 27.48 |

II. WATER VOLUME CHARGES

Charges for any volume of water passing from the City of Wichita water system to a private water system shall be billed to the individual residing at the residence or business. Volume charges shall not apply to flat rate services which have been properly established with the Water & Sewer Department.

A. AVERAGE WINTER CONSUMPTION

Average winter consumption (AWC) shall be defined as the arithmetic mean monthly consumption computed by adding the metered consumption on bills rendered during the months of December, January, February, and March and then dividing this sum by the number of billings rendered during these same months. Each customer's AWC shall be recalculated in April of each year. Metered consumption charges for ensuing twelve months shall be computed utilizing the AWC as calculated each April, apportioning usage among the applicable rate blocks as designated below. In those instances where no consumption data exists for the calculation of an AWC for particular customers, the Director of Water & Sewer shall determine the most appropriate method of establishing average winter consumptions for such circumstances. The minimum monthly AWC for any metered service sized one (1) inch or less shall be 6,000 gallons. If a billing period of greater than one month (defined as days of service within twenty eight to thirty one days), is used, the actual or minimum AWC shall be adjusted accordingly on a daily basis.

B. RETAIL VOLUME CHARGES

INSIDE CITY

Rates Per
1,000 Gallons
2006 2007 & Beyond

| | | |
|--|-------------------|--------|
| Block 1: Metered Consumption Through 110% of AWC | \$0.78 | \$0.81 |
| Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services | \$2.82 | \$2.90 |
| Block 3: Metered Consumption Above 310% of AWC | \$4.24 | \$4.36 |

OUTSIDE CITY

Rates Per
1,000 Gallons
2006 2007 & Beyond

| | | |
|--|-------------------|--------|
| Block 1: Metered Consumption Through 110% of AWC | \$1.25 | \$1.29 |
| Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services | \$4.51 | \$4.64 |
| Block 3: Metered Consumption Above 310% of AWC | \$6.78 | \$6.98 |

C. RETAIL VOLUME CONSERVATION CONTRACT RATES

In order to obtain significant reductions in customers' annual water use, through more efficient use of Wichita's water resources, the Director of Water & Sewer is empowered to negotiate and execute contracts with retail customers which provide for a significant annual water savings by customers in return for charging all water use at the retail volume conservation contract rate. The Water & Sewer Director is further empowered to establish such rules and regulations in contract terms as may be necessary to most equitably carry out the intent of this section. Rules and regulations shall be promulgated based on the needs of the City of Wichita as demonstrated in its water conservation plan and programs to address the requirements of the State of Kansas. In all circumstances, customers seeking to qualify for the conservation contract rate must make written

application to the Director of Water & Sewer, detailing methods to be employed to conserve water, the time frame for implementing such conservation methods and the expected annual water savings in gallons per year to be derived from implementing such conservation plans. Each January, customers who have entered into conservation contract rate agreements shall report the results of their conservation initiatives to the Director of Water & Sewer. If the Director of Water & Sewer determines that any customer did not meet the goal, then a billing will be rendered to the customer to reconcile charges for the proportion of the customer's prior year total annual consumption volume that did not qualify for the retail conservation contract rate as determined by the formula below:

$$(\text{PRIOR YEAR'S RETAIL VOLUME CHARGE BLOCK 2 RATE} - \text{PRIOR YEAR'S RETAIL VOLUME CONSERVATION CONTRACT RATE}) \times ((\text{PRIOR YEAR'S ANNUAL WATER USE}/1,000) \times (1 - (\text{PRIOR YEAR'S ACTUAL ANNUAL GALLONS OF WATER SAVED} / \text{PRIOR YEAR'S PROJECTED ANNUAL GALLONS OF WATER SAVED})))$$

Customers exceeding their water conservation goals may use such excess savings in gallons as a credit toward the next year's water savings goal. This rate shall only be made available to customers who can demonstrate potential water savings that would be considered economically significant to the City of Wichita as determined by the Director of Water & Sewer.

INSIDE CITY CONSERVATION CONTRACT RATE

Rates Per
1,000 Gallons
2006 2007 & Beyond

Block 1: All Metered Consumption ~~\$1.85~~ \$1.91

OUTSIDE CITY CONSERVATION CONTRACT RATE

Rates Per
1,000 Gallons
2006 2007 & Beyond

Block 1: All Metered Consumption ~~\$2.96~~ \$3.05

D. WHOLESALE VOLUME RATES

Rates Per
1,000 Gallons
2006 2007 & Beyond

Block 1: Metered Consumption
Through 110% of AWC ~~\$0.85~~ \$0.88

Block 2: Metered Consumption
Between 111% and 310%
of AWC and from Fire
Services ~~\$4.50~~ \$4.64

Block 3: Metered Consumption
Above 310% of AWC. ~~\$6.74~~ \$6.94

III. ASSOCIATION OF LAWN SERVICES

In all cases where practical and appropriate, lawn service accounts shall be associated with the primary service account at a particular service location. The individual consumption amounts for the primary service account and the lawn service accounts shall be added together and the total consumption for the billing period shall be allocated to the appropriate water volume charge rate blocks and volume charges calculated therefor. The consumption as recorded on billings rendered in the months of December, January, February and March for both the primary and lawn service accounts shall be used to calculate the average winter consumption used in apportioning water usage among the volume rate blocks whenever lawn service accounts are associated with primary service accounts.

IV. LATE CHARGES

An amount equal to one and one-half percent of the unpaid balance will be added to all bills not paid within twenty-five (25) days of the date of issuance.

V. MISCELLANEOUS CHARGES

When termination of water service has been ordered by the department for any cause, the customer shall be charged the sum of thirteen (\$13.00) dollars to cover costs of arranging such termination. In instances where the service is actually terminated and later reinstated, the customer shall be charged an additional thirteen (\$13.00) dollars to cover costs of reinstating the service.

If a customer requests inspection and testing of a meter a testing fee shall be paid. If upon such examination and test conducted in the presence of the customer, or the customer's representative, the meter is found to be inaccurate according to the standards of the American Water Works Association, a meter will be substituted and the adjustment of the water bill for the preceding billing period shall include a credit for the testing fee.

Where water service is turned on and shut off in a period of less than one billing period, the billing shall be computed as if service was rendered for an entire billing period. Any customer desiring to discontinue water service temporarily must make request therefor at the office of the department not less than two working days prior to the date on which the service is desired to be discontinued. After the effective date of such discontinuance, all charges for such water and water service shall cease for the period during which the service shall be shut off; provided, that the period of such discontinuance shall not be less than thirty days.

A fee of thirteen (\$13.00) dollars shall be required for the disconnection of a lawn service when the customer of record requests disconnection without concurrently requesting disconnection of the associated service account at the service location. An additional fee of thirteen (\$13.00) dollars shall be required for the reconnection of the lawn service at the same location.

Charges and billing for special service, as defined herein, shall be determined by the Director of Water & Sewer. A fee of eleven dollars and fifty cents(\$11.50) shall be charged to all customers requesting service at a new service location."

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after January 1, ~~2006~~ 2007 and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this ____ day of _____, 2006.

Carlos Mayans, Mayor
City of Wichita

ATTEST:
Karen Sublett,
City Clerk

Approved as to Form:
Gary E. Rebenstorf,
Director of Law

RAES AND CHARGES FOR WATER SERVICE

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 17.12.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SCHEDULE OF RATES AND CHARGES FOR WATER SERVICE, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 17.12.090 of the Code of the City of Wichita is hereby amended to read as follows:

WATER RATES AND CHARGES. On and after January 1, 2007, the schedule of rates and charges as set forth below shall apply to all categories of water customers with metered, flat rate or fire protection services:

I. MINIMUM WATER SERVICE CHARGES

Minimum water service charges per monthly billing period, based on water service sizes, shall be assessed to all customers who have service availability at any time during a billing period as shown below. An individual is deemed to have service available if the private water service system, at the individual's residence or business, has been connected to the City of Wichita's water system at any time during a billing period. The minimum charge is to be applied regardless of whether or not any water volume passed from the City to private water systems during a billing period. Water service connections deemed inactive by the Director of Water & Sewer shall not be assessed minimum water service charges.

A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | | <u>2007 & Beyond</u> |
|---------------------------------|-------|---------------------------------|
| 5/8 inch | | \$5.74 |
| 3/4 inch | | 5.79 |
| 1 inch | 5.97 | |
| 1 1/2 inch | 6.22 | |
| 2 inch | 6.87 | |
| 3 inch | 11.79 | |
| 4 inch | 13.61 | |
| 6 inch | 17.85 | |
| 8 inch | 22.69 | |
| 10 inch | 25.74 | |
| 12 inch | 32.41 | |

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | | <u>2007 & Beyond</u> |
|---------------------------------|--|---------------------------------|
| 5/8 inch | | \$ 9.18 |
| 3/4 inch | | 9.26 |
| 1 inch | | 9.56 |
| 1 1/2 inch | | 9.95 |
| 2 inch | | 10.99 |
| 3 inch | | 18.86 |
| 4 inch | | 21.77 |
| 6 inch | | 28.56 |
| 8 inch | | 36.31 |
| 10 inch | | 41.19 |
| 12 inch | | 51.86 |

B. FLAT RATE/UNMETERED MONTHLY CHARGES

2007 & Beyond
\$ 12.51

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | <u>2007 & Beyond</u> |
|--------------------------|--------------------------|
| 5/8 inch | \$.77 |
| 3/4 inch | .79 |
| 1 inch | .89 |
| 1 1/2 inch | 1.07 |
| 2 inch | 1.47 |
| 3 inch | 4.49 |
| 4 inch | 5.61 |
| 6 inch | 8.23 |
| 8 inch | 11.20 |
| 10 inch | 13.06 |
| 12 inch | 17.18 |

OUTSIDE CITY

MINIMUM MONTHLY

| <u>WATER METER SIZES</u> | <u>2007 & Beyond</u> |
|--------------------------|--------------------------|
| 5/8 inch | \$1.23 |
| 3/4 inch | 1.27 |
| 1 inch | 1.43 |
| 1 1/2 inch | 1.71 |
| 2 inch | 2.36 |
| 3 inch | 7.18 |
| 4 inch | 8.98 |
| 6 inch | 13.17 |
| 8 inch | 17.93 |
| 10 inch | 20.90 |
| 12 inch | 27.48 |

II. WATER VOLUME CHARGES

Charges for any volume of water passing from the City of Wichita water system to a private water system shall be billed to the individual residing at the residence or business.

Volume charges shall not apply to flat rate services which have been properly established with the Water & Sewer Department.

A. AVERAGE WINTER CONSUMPTION

Average winter consumption (AWC) shall be defined as the arithmetic mean monthly consumption computed by adding the metered consumption on bills rendered during the months of December, January, February, and March and then dividing this sum by the number of billings rendered during these same months. Each customer's AWC shall be recalculated in April of each year. Metered consumption charges for ensuing twelve months shall be computed utilizing the AWC as calculated each April, apportioning usage among the applicable rate blocks as designated below. In those instances where no consumption data exists for the calculation of an AWC for particular customers, the Director of Water & Sewer shall determine the most appropriate method of establishing average winter consumptions for such circumstances. The minimum monthly AWC for any metered service sized one (1) inch or less shall be 6,000 gallons. If a billing period of greater than one month (defined as days of service within twenty eight to thirty one days), is used, the actual or minimum AWC shall be adjusted accordingly on a daily basis.

B. RETAIL VOLUME CHARGES

INSIDE CITY

Rates Per
1,000 Gallons
2007 & Beyond

| | |
|--|--------|
| Block 1: Metered Consumption Through 110% of AWC | \$0.81 |
| Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services | \$2.90 |
| Block 3: Metered Consumption Above 310% of AWC | \$4.36 |

OUTSIDE CITY

Rates Per
1,000 Gallons
2007 & Beyond

| | |
|---|--------|
| Block 1: Metered Consumption Through 110% of AWC | \$1.29 |
|---|--------|

| | |
|--|--------|
| Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services | \$4.64 |
|--|--------|

| | |
|---|--------|
| Block 3: Metered Consumption Above 310% of AWC | \$6.98 |
|---|--------|

C. RETAIL VOLUME CONSERVATION CONTRACT RATES

In order to obtain significant reductions in customers' annual water use, through more efficient use of Wichita's water resources, the Director of Water & Sewer is empowered to negotiate and execute contracts with retail customers which provide for a significant annual water savings by customers in return for charging all water use at the retail volume conservation contract rate. The Water & Sewer Director is further empowered to establish such rules and regulations in contract terms as may be necessary to most equitably carry out the intent of this section. Rules and regulations shall be promulgated based on the needs of the City of Wichita as demonstrated in its water conservation plan and programs to address the requirements of the State of Kansas. In all circumstances, customers seeking to qualify for the conservation contract rate must make written application to the Director of Water & Sewer, detailing methods to be employed to conserve water, the time frame for implementing such conservation methods and the expected annual water savings in gallons per year to be derived from implementing such conservation plans. Each January, customers who have entered into conservation contract rate agreements shall report the results of their conservation initiatives to the Director of Water & Sewer. If the Director of Water & Sewer determines that any customer did not meet the goal, then a billing will be rendered to the customer to reconcile charges for the proportion of the customer's prior year total annual consumption volume that did not qualify for the retail conservation contract rate as determined by the formula below:

((PRIOR YEAR'S RETAIL VOLUME CHARGE BLOCK 2 RATE - PRIOR YEAR'S RETAIL VOLUME CONSERVATION CONTRACT RATE) x ((PRIOR YEAR'S ANNUAL WATER USE/1,000) x (1 - (PRIOR YEAR'S ACTUAL ANNUAL GALLONS OF WATER SAVED / PRIOR YEAR'S PROJECTED ANNUAL GALLONS OF WATER SAVED))))

Customers exceeding their water conservation goals may use such excess savings in gallons as a credit toward the next year's water savings goal. This rate shall only be made available to customers who can demonstrate potential water savings that would be considered economically significant to the City of Wichita as determined by the Director of Water & Sewer.

INSIDE CITY CONSERVATION CONTRACT RATE

Rates Per
1,000 Gallons
2007 & Beyond

| | |
|----------------------------------|--------|
| Block 1: All Metered Consumption | \$1.91 |
|----------------------------------|--------|

OUTSIDE CITY CONSERVATION CONTRACT RATE

FE Rates Per
1,000 Gallons
2007 & Beyond

| | |
|----------------------------------|--------|
| Block 1: All Metered Consumption | \$3.05 |
|----------------------------------|--------|

E. WHOLESALE VOLUME RATES

Rates Per
1,000 Gallons
2007 & Beyond

| | |
|---|--------|
| Block 1: Metered Consumption Through 110% of AWC | \$0.88 |
| Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services | \$4.64 |
| Block 3: Metered Consumption Above 310% of AWC. | \$6.94 |

III. ASSOCIATION OF LAWN SERVICES

In all cases where practical and appropriate, lawn service accounts shall be associated with the primary service account at a particular service location. The individual consumption amounts for the primary service account and the lawn service accounts shall be added together and the total consumption for the billing period shall be allocated to the appropriate water volume charge rate blocks and volume charges calculated therefor. The consumption as recorded on billings rendered in the months of December, January, February and March for both the primary and lawn service accounts shall be used to calculate the average winter consumption used in apportioning water usage among the volume rate blocks whenever lawn service accounts are associated with primary service accounts.

IV. LATE CHARGES

An amount equal to one and one-half percent of the unpaid balance will be added to all bills not paid within twenty-five (25) days of the date of issuance.

MISCELLANEOUS CHARGES

When termination of water service has been ordered by the department for any cause, the customer shall be charged the sum of thirteen (\$13.00) dollars to cover costs of arranging such termination. In instances where the service is actually terminated and later reinstated, the customer shall be charged an additional thirteen (\$13.00) dollars to cover costs of reinstating the service. If a customer requests inspection and testing of a meter a testing fee shall be paid. If upon such examination and test conducted in the presence of the customer, or the customer's representative, the meter is found to be inaccurate according to the standards of the American Water Works

Association, a meter will be substituted and the adjustment of the water bill for the preceding billing period shall include a credit for the testing fee. Where water service is turned on and shut off in a period of less than one billing period, the billing shall be computed as if service was rendered for an entire billing period. Any customer desiring to discontinue water service temporarily must make request therefor at the office of the department not less than two working days prior to the date on which the service is desired to be discontinued. After the effective date of such discontinuance, all charges for such water and water service shall cease for the period during which the service shall be shut off; provided, that the period of such discontinuance shall not be less than thirty days. A fee of thirteen (\$13.00) dollars shall be required for the disconnection of a lawn service when the customer of record requests disconnection without concurrently requesting disconnection of the associated service account at the service location. An additional fee of thirteen (\$13.00) dollars shall be required for the reconnection of the lawn service at the same location.

Charges and billing for special service, as defined herein, shall be determined by the Director of Water & Sewer. A fee of eleven dollars and fifty cents (\$11.50) shall be charged to all customers requesting service at a new service location."

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after January 1,

2007 and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this ____ day of _____, 2006.

Carlos Mayans, Mayor
City of Wichita

ATTEST:

Karen Sublett,
City Clerk

Approved as to Form:
Gary E. Rebenstorf,
Director of Law

Agenda Item No. 30

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0849

TO: Mayor and City Council

SUBJECT: Quarterly Financial Report for the quarter ending June 30, 2006

INITIATED BY : Department of Finance

AGENDA: New Business

Recommendation: Receive and file the quarterly financial report.

Background: The Finance Department prepares quarterly unaudited financial reports to monitor and review the financial activities of the operating and capital funds. The report is presented to provide the City Council and citizens with information that will assist in making informed decisions. The report is available on the City's web-site and citizens may obtain a printed copy by contacting the Department of Finance at 268-4651.

Analysis: Comparisons of budgeted amounts to actual revenue and expenditures are provided for each operating fund. In addition, financial statements prepared on an accrual basis are presented for enterprise funds, consistent with requirements of revenue bond covenants.

Financial highlights are summarized beginning on page iii, with financial statements beginning on page 1. Information supplementary to the financial statements begins on page 63, including information on the performance of invested funds, the City's bonded indebtedness relative to the legal debt limitations, capital projects currently underway, tax abatements, the status of the Debt Service fund relative to any debt service payments due from the tax increment financing districts, and a quarterly summary of disadvantaged and emerging business activity.

Financial Considerations: The Director of Finance will provide a financial overview and stand for questions.

Legal Considerations: No consideration necessary.

Recommendations/Actions: It is recommended that the City Council receive and file the Quarterly Financial Report for the quarter ended June 30, 2006.

Agenda Item No. 31
(Recommended Action Amended)

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0850

TO: Mayor and City Council

SUBJECT: Request for Resolution of Support for Application for Low-Income Housing Tax Credits; Mullen Court Apartments (District 6)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Adopt the resolution.

Background: The City has received a request from Transitional Residence Company, LLC (TRC), for a City Council resolution of support for its application for Low-Income Housing Tax Credits in connection with the acquisition and renovation of the Mercer Apartments. (The State of Kansas requires developers/owners to obtain a Resolution of Support from the local government, when submitting applications for financing through the Low-Income Housing Tax Credit Program.)

Under the City's adopted Low-Income Housing Tax Credit (LIHTC) policy, developers/owners must present proposed LIHTC projects to the applicable District Advisory Board (DAB). The policy requires a subsequent review by the Housing Advisory Board (HAB) and the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for design appropriateness. Once the project is reviewed and approved by the DAB, the HAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the LIHTC application.

Analysis: The project proposed by TRC involves acquisition of the Mercer Apartments, located at 1146 N. Topeka, by H.O.P.E., Inc. (HOPE), a local non-profit organization. TRC will serve as the project developer. The new project will be known as Mullen Court Apartments. HOPE will refer potential clients for housing and will provide services to apartment residents on an "as needed" basis. The project will involve renovation of the existing apartment building in order to provide for twenty-four one-bedroom apartments, and 8 studio apartments, for a total of 32 units. The monthly rent amounts are expected to be \$275 to \$335 for the one-bedroom units and \$235 to \$250 for the studio apartments. Tenants will pay for electric service (units are to be all-electric), and the developer will pay for water, sewer, and trash removal. Part-time on-site management will be provided.

Renovations of the buildings involved will be carried out in such a manner so as to retain historic character.

The City's Low Income Housing Tax Credit Policy requires a set-aside of 20% of the units (in this case, 7 total units) for market rate tenants. HOPE and TRC have agreed to comply with this requirement.

The City's Planning Department has provided comment regarding the proposed project, with respect to zoning compliance and consistency with the Midtown Neighborhood Plan. The on-site parking will ultimately fall short of current City requirements, which call for 1.25 spaces per one-bedroom or studio apartment. There are currently 22 on-site parking spaces provided for the complex. Thus, it will be necessary for the developer to request an administrative reduction of the parking requirement and possibly a zoning variance, or to make other arrangements to provide additional parking for the complex.

The Planning Department also noted that the 2020 Future Land Use Concept of the Midtown Neighborhood Plan depicts the apartment complex site to be appropriate for single-family detached or duplex uses, not multi-family. The apartment complex is currently properly zoned.

The Office of Central Inspection (OCI) concurs with the parking requirements noted above.

In consideration of the comments provided by Planning and OCI, Housing and Community Services believes that although the project does not promote homeownership it does eliminate a blighting influence, will improve the existing site involved, and will provide safe, clean affordable rental housing in a manner that does not require a change in the existing zoning. In this sense, Housing and Community Services staff believes the project to be consistent with the City's revitalization goals, as the site is located within the City's Neighborhood Revitalization Area. Housing and Community Services is therefore recommending approval of a recommendation for the adoption of a resolution of support by the City Council, provided that the developer can obtain any waivers and variances that will be required to complete the project.

The project was presented to the District VI Advisory Board on June 5, 2006. The DAB voted to recommend denial of the resolution of support by a 6-3 vote, due to neighborhood organization concerns regarding the number of LIHTC projects in the neighborhood, the desire to maintain the historic nature of the area, the construction of parking lots adjacent to historic buildings, and the fear that LIHTC residents will not invest in homeownership. During the DAB meeting, the neighborhood organization also expressed concern regarding renovation of a single-family home located at 1156 N. Topeka, which included addition of an accessory apartment to the detached garage, as part of the original LIHTC proposal. Concern was also expressed regarding acquisition of an adjacent vacant lot that was proposed to serve as off-street parking for the apartment complex.

Following the DAB VI vote, the developer met with the neighborhood organization, in an effort to modify the project plan in such a manner so as to gain neighborhood organization support for the project. As a result of those meetings, the neighborhood organization voted to support the project subject to five conditions:

1. HOPE, Inc., serves as the investor for the project and will own the property.
2. No tax credits will be used to alter or develop the single-family dwelling north of the Mullen Court building, and the structure will remain a single-family dwelling.

3. The yard for the aforementioned single-family dwelling, which is directly to the north of the Mullen Court building will maintain its current borders as reflected by the fence currently surrounding the property.

4. No zoning change will be sought to provide for parking at the Mullen Court project. (This is in reference to additional parking.)

5. A variance and/or administrative change will be sought to allow for street parking or parking at Grace Med in order to satisfy the parking requirements of the building.

The developer has agreed to the above conditions, will pursue historic tax credits to renovate the single-family home, and will market the property to a single-family homeowner. The single-family home will not be a part of the resolution of support.

The Housing Advisory Board approved recommendation for adoption of the resolution of support by a 6-0 vote.

The resolution of support will not constitute final plan or design approval. If the project is awarded tax credits, the project developer must comply with all requirements associated with the appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's LIHTC Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Financial Considerations: The total project cost for acquiring and renovating the apartment complex is estimated to be approximately \$3,600,000. The applicant intends to finance the project utilizing funding from the sale of housing tax credits and historic tax credits, a private bank loan and financing provided through the Federal Home Loan Bank's Affordable Housing Program. The City will not directly participate in the financing of the project.

Goal Impact: The proposed project contributes to the City Council goal of Economic Vitality and Affordable Living. The project is also consistent with the vision statement of the City's Comprehensive Housing Policy, in that it will provide safe, affordable basic shelter, eliminate blight, provide for new housing development in an established neighborhood, provide for collaboration between City, State and Federal government and a non-profit agency, and will promote the availability of housing services and programs in Wichita.

Legal Considerations: In compliance with the requirements of City Council Resolution No. R-95-479, TRC has notified property owners within 200 feet of the proposed project, in order to allow them the opportunity to provide comment to the City Council regarding the project. City Council Resolution No. R-95-479 also requires that the City Council hold a public hearing. Upon closing the public hearing, the Council may vote on a motion to approve the resolution of support for the application of low-income housing tax credits. The resolution document has been approved as to form by the City Law Department.

Recommendations/Actions: Close the public hearing; adopt the resolution of support for the Low-Income Housing Tax Credit Application, subject to all local building and zoning codes, ordinances and any additional design review requirements and *agreements reached between the developer and the neighborhood* and authorize the necessary signatures.

Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas has been informed by Transitional Residence Company, LLC that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lots 230, 232, 234, 236, 238, 240, on Topeka Avenue, Stafford and Wright's addition to Wichita, Sedgwick County, Kansas.

WHEREAS, this housing development will contain up to 24 one-bedroom units, eight studio units, an exercise facility, a community room, with project ownership providing full-time, on-site management; and

WHEREAS, this resolution establishing support for the aforesaid housing development shall be limited to a total of 25 units.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until August 8, 2007. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Low Income Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this _15th_ day of __August__, 2006.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

Agenda Item No. 32

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0851

TO: Mayor and City Council

SUBJECT: Request for Resolution of Support for Application for Low-Income Housing Tax Credits; Richmond Place Apartments (District 6)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Adopt the resolution.

Background: The City has received a request from Kansas Elks Training Center for the Handicapped (KETCH) and Mark Cox, a local builder/developer, for a City Council resolution of support for its application for Low-Income Housing Tax Credits in connection with the development of rental housing on a tract of land located on the south side of 10th Street North, just west of Richmond, in order to develop a 20-unit housing project that will serve persons with developmental disabilities. The legal description for the site is Lots 1 and 2, Gordon Norris Addition. (The State of Kansas requires developers/owners to obtain a Resolution of Support from the local government, when submitting applications for financing through the Low-Income Housing Tax Credit Program.)

Under the City's adopted LIHTC policy, developers/owners must present proposed LIHTC projects to the applicable District Advisory Board (DAB). The policy requires a subsequent review by the Housing Advisory Board (HAB) and the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for design appropriateness and consistency with applicable neighborhood plans. Once the project is reviewed by the DAB, the HAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the LIHTC application.

Analysis: The project proposal involves site acquisition, and construction of a 20-unit housing project that will serve persons with developmental disabilities. The new project will be known as Richmond Place. According to the project summary, the apartment units will be of studio design, and will offer a bathroom and kitchenette. There will be an on-site laundry facility, a common area for socialization amongst the residents and a common food preparation area. KETCH will have training staff located on site during the time that residents are home. The training staff will assist the residents in maintaining independent living skills and will also provide assistance with cooking, cleaning, and provision of transportation. The monthly rent amounts are expected to be approximately \$345, including utilities.

KETCH proposes to construct the apartments in order to provide eight units that will be fully ADA compliant and wheelchair accessible. The remaining 12 units will be designed to serve individuals who are developmentally disabled, but do not require wheelchair access.

The City's Low Income Housing Tax Credit Policy requires a set-aside of 20% of the units for market-rate tenants. However, the City's policy also includes a provision for waiver of the 20% market-rate unit requirement in the event the project will serve a special needs population. The proposed project is deemed to be eligible for the waiver.

The Office of Central Inspection (OCI) reviewed the project site plan and elevation drawings and has provided the following comments:

- The minimum building setbacks in the MF-29 zoning designation are 25' for the front yard, 20' for the rear yard, and at least 6' for the interior side yards.
- Because the west interior side property line and the south (rear) property line abut SF-5 single-family zoning, there will be a Unified Zoning Code (UZC) "compatibility" building setback requirement applicable to these property lines. This minimum building setback from the west and south property lines would be 25'. It does not appear that the proposed layout accounts for this much setback from the west property line, although it may for setback from the south property line. Minimum compatibility setbacks may be administratively adjusted to reduce them (by application and approval through MAPD/ Superintendent of OCI).
- Solid screen fencing will be required along the west and south property lines, and the west and south property lines will also require a landscape buffer with trees every 40' at minimum.
- Landscaping /landscaped street yard along 10th Street will be required, and it does not appear that the site plan provides for this minimum landscaped street yard area. Parking lot screening will also be required along 10th Street. The project developer may be able to reduce the number of parking spaces to attain some additional landscaped street yard/parking lot screening area, as the minimum UZC parking requirements may be administratively adjusted by up to 25% for infill development projects such as this. (The site plan reflects a total of 28 parking spaces for the proposed 20 units. UZC requires a total of 25 spaces for 20 studio units.)
- The east and west building elevations/design include facades that are "broken up" with different materials and elements, and pitched roof elements above the windows. However, it is recommended that the broad expanse of the south elevation, which abuts single-family zoning, be modified with some architectural elements such as windows, brick bands or brick on a portion of the façade.

The developer indicates that eight units will be fully accessible. However, the Fair Housing Act accessibility guidelines, which would apply to this project, require that all units on the first level (grade level) must be "adaptable", meaning that the other six of the 14 units on grade level must be designed to be "adaptable" to interior ADA requirements. The developer has agreed to comply with any plan review requirements.

The resolution of support will not constitute final plan or design approval. If the project is awarded tax credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's LIHTC Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Financial Considerations: The total project cost is estimated to be approximately \$1,739,550. The developer intends to finance the project utilizing funding from the sale of housing tax credits, a

private bank loan and financing provided through the Federal Home Loan Bank's Affordable Housing Program. The City will not directly participate in the financing of the project.

Goal Impact: The proposed project contributes to the City Council goal of Economic Vitality and Affordable Living. The project is also consistent with the vision statement of the City's Comprehensive Housing Policy, in that it will provide safe, affordable basic shelter, provide for new housing development in an established neighborhood, provide for collaboration between City, State and Federal government and a non-profit agency, and will promote the availability of housing services and programs in Wichita.

Legal Considerations: The project has been reviewed by the Housing and Community Services Department and has received recommendation for adoption of the resolution of support from the DAB and the HAB. The District VI Advisory approved a recommendation for adoption of the resolution of support by an 8-0 vote, and the HAB approved recommendation for adoption of the resolution of support by a 6-0 vote. The DCC has also approved recommendation for adoption of the resolution.

In compliance with the requirements of City Council Resolution No. R-95-479, TRC has notified property owners within 200 feet of the proposed project, in order to allow them the opportunity to provide comment to the City Council regarding the project. City Council Resolution No. R-95-479 also requires that the City Council hold a public hearing. Upon closing the public hearing, the Council may vote on a motion to approve the resolution of support for the application of low-income housing tax credits. The resolution document has been approved as to form by the City Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Low-Income Housing Tax Credits, with waiver of the 20% market-rate unit requirement, subject to all local building and zoning codes, ordinances and any additional design review requirements, and authorize the necessary signatures.

Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas has been informed by Kansas Elks Training Center for the Handicapped (KETCH), that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lots 1 and 2, Gordon Norris addition to Wichita, Sedgwick County, Kansas

WHEREAS, this housing development will contain up to 20 studio apartment units to serve individuals with developmental disabilities. The development will include on site laundry facilities, a common area, and a common food preparation area with training staff located on site during the time residents are home.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That we support and approve the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until August 8, 2007. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Low Income Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this _8th_ day of __August__, 2006.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

Agenda Item No. 33

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0852

TO: Mayor and City Council

SUBJECT: Request for Resolution of Support for Application for Low-Income Housing Tax Credits; Madison Family Residences (District 1)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve the recommendation.

Background: The City has received a request from Barry Community Development (BCD) and Mennonite Housing Rehabilitation Services, Inc., (MHRS) for a City Council resolution of support for its application for Low-Income Housing Tax Credits in connection with the acquisition of property located on the east and west sides of Madison Street, between 9th and 10th Streets, and the construction of a multi-family housing project. (The State of Kansas requires developers/owners to obtain a Resolution of Support from the local government, when submitting applications for financing through the Low-Income Housing Tax Credit Program.)

Under the City's adopted Low-Income Housing Tax Credit (LIHTC) policy, developers/owners must present proposed LIHTC projects to the applicable District Advisory Board (DAB). The policy requires a subsequent review by the Housing Advisory Board (HAB) and the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for design appropriateness and consistency with applicable neighborhood plans. Once the project is reviewed by the DAB, the HAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the LIHTC application.

Analysis: The project proposed by BCD and MHRS involves acquisition of all parcels on the east and west sides of Madison Street, between 9th and 10th Streets, as well as adjacent parcels on 9th Street, in order to demolish existing buildings, clear sites, and construct a multi-family housing project that would provide 36 units of housing within 9 four-plex buildings. The project will offer 32 three-bedroom units and four two-bedroom units. Three bedroom units will offer two bathrooms, and the two-bedroom units will offer one bathroom. Apartment units will feature fully equipped kitchens and washing machines and dryers. Two bedroom units will rent for \$375, with the tenants paying utilities. Three bedroom units will rent for \$425 to \$525, with tenants paying utilities.

The City's Low Income Housing Tax Credit Policy requires a set-aside of 20% of the units for market rate rents. The developers are requesting waiver of this requirement, due to the following

extenuating circumstances. The developers' market study reflects that the primary market area will be northeast Wichita, and that the project will appeal to potential tenants who currently reside in this area and who have adequate incomes to pay the proposed rents and will find the development more attractive in terms of price, unit features and project amenities than other available rental units. In addition, the project plan includes a playground facility, basketball court, a community room/clubhouse that will seat 150 people, and a separate 1,200 square foot building that will include three offices that will be made available to elected officials, community police officers, and possibly a credit union. It is necessary to obtain the maximum allocation from the LIHTC program if these facilities are to be included in the project plan. Housing and Community Services is supportive of the waiver.

The City's Planning Department has provided comment regarding the proposed project, with respect to design, zoning compliance and consistency with the Central Northeast Neighborhood Plan. The Planning Department does not recommend support for the project, because they do not consider the project to be consistent with the Central Northeast Area Plan, citing Initiative 2.7, which calls for increased owner-occupied housing in the area.

Planning also notes that while the project will not require re-zoning, a conditional use permit will be required in order to provide four-plex buildings within an area that is currently zoned Two-Family 3 (TF-3). The Metropolitan Area Planning Commission and ultimately, the City Council must approve the conditional use permit.

The Office of Central Inspection (OCI) will require complete plan review. OCI comments, following a preliminary review of the site plan, reflect that the trash dumpsters may need to be relocated in order to move them away from sidewalks/pedestrian areas. Other modifications to the site plan may be required as part of the process of obtaining the aforementioned conditional use permit.

In consideration of the comments provided by Planning and OCI, Housing and Community Services believes that although the project does not promote homeownership it does eliminate a blighting influence, will improve the existing site, and provide safe, clean affordable rental housing. In this sense, Housing and Community Services staff believes the project to be consistent with the City's revitalization goals, as the site is located within the City's Neighborhood Revitalization Area, and involves the removal and replacement of blighted housing. Housing and Community Services is therefore recommending adoption of a resolution of support by the City Council, provided that the developer can obtain a conditional use permit and any other waivers and/or variances that will be required to complete the project.

The project has been reviewed by the Housing and Community Services Department, and has received recommendation for adoption of a resolution of support from the DAB and the HAB with waiver of the 20% market-rate unit requirement. The District I Advisory Board approved a recommendation for adoption of a resolution of support by an 8-0 vote, and the Housing Advisory Board approved recommendation for adoption of a resolution of support by a 6-0 vote. The DCC has also approved a recommendation for adoption of the resolution.

The resolution of support will not constitute final plan or design approval. If the project is awarded tax credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's LIHTC Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Financial Considerations: The total project cost is estimated to be approximately \$5,096,200. The applicant intends to finance the project utilizing funding from the sale of housing tax credits, a private bank loan and financing provided through the Federal Home Loan Bank's Affordable Housing Program. The City will not directly participate in the financing of the project.

Goal Impact: The proposed project contributes to the goal of Economic Vitality and Affordable Living. The project is also consistent with the vision statement of the City's Comprehensive Housing Policy, in that it will provide safe, affordable basic shelter, eliminate blight, provide for new housing development in an established neighborhood, provide for collaboration between City, State and Federal government and a non-profit agency, and will promote the availability of housing services and programs in Wichita.

Legal Considerations: In compliance with the requirements of City Council Resolution No. R-95-479, the developers have notified property owners within 200 feet of the proposed project, in order to allow them the opportunity to provide comment to the City Council regarding the project. City Council Resolution No. R-95-479 also requires that the City Council hold a public hearing. Upon closing the public hearing, the Council may vote on a motion to approve the resolution of support for the application of low-income housing tax credits. The resolution document has been approved as to form by the City Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Low-Income Housing Tax Credits, with waiver of the 20% market-rate unit requirement, subject to all local building and zoning codes, ordinances and any additional design review requirements, and authorize the necessary signatures.

Attachment: Resolution

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas has been informed by Mennonite Housing Rehabilitation Services, Inc. and Barry Community Development that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lots 1-35 Madison Avenue, Solomon's 2nd Addition to Wichita, Sedgwick County, Kansas, and Lot 3, 4, 7,8,9, 10,11,12 and 13, Park, now 9th, Solomon's 2nd Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, this housing development will contain up to 36 three-bedroom units with a clubhouse, community room with a full-service kitchen, computer room, youth game room, play ground, with play ground equipment and a basketball court. There will also be a building available to accommodate on-site social services, such as a credit union, a community police office, or offices for local elected officials.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until August 8, 2007. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Low Income Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this _15th_ day of __August__, 2006.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:
Gary E. Rebenstorf, City Attorney

Agenda Item No. 34.

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0853

TO: Mayor and City Council Members

SUBJECT: Petition to pave Alta, from approximately 325' west of Ellis to Hydraulic (District III)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the Petition.

Background: The signatures on the Petition represent 26 of 54 (48.1%) resident owners and 50.5% of the improvement district area. District III Advisory Board sponsored a June 7, 2006, neighborhood hearing on the project. The Board deferred action on the Petition and asked Public Works-Engineering Staff to hold a neighborhood meeting with affected property owners. The neighborhood meeting was held on June 29, 2006. On July 5, 2006, District III Advisory Board again considered the Petition. The Board voted 8-3 to recommend approval of the project.

Analysis: The project will provide paved access to a developed residential area.

Financial Considerations: The estimated project cost is \$300,000 with \$294,944 assessed to the improvement district and \$5,056 paid by the City. The method of assessment is the square foot basis. The estimated assessment to individual properties is \$00.33 per square foot of ownership. The City share is for the cost of intersection construction. The funding source for the City share is General Obligation Bonds.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing street paving in an existing residential neighborhood.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition, adopt the Resolution and authorize the necessary signatures.

Agenda Item No. 35

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0854

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Water Distribution System to serve an area along Mead Street, between 55th St. South and 57th St. South (District III)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the Petition.

Background: The signatures on the Petition represent 16 of 34 (47%) resident owners and 57% of the improvement district area. District III Advisory Board sponsored a July 19, 2006, neighborhood hearing on the project. The Board voted 11-0 to recommend approval of the project.

Analysis: The project will construct a water distribution system for a developed residential area that is currently served by private water wells.

Financial Considerations: The estimated project cost is \$95,000 with the total assessed to the improvement district. The method of assessment is the square foot basis. The estimated assessment to individual properties is \$00.20 per square foot of ownership.

Goal Impact: This project addresses the Efficient Infrastructure and Vibrant Neighborhoods goals by extending municipal water service to an existing residential area.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition, adopt the Resolution and authorize the necessary signatures.

Agenda Item No. 36

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0855

TO: Mayor and City Council Members

SUBJECT: A06-17R Request by Captain Joe Dessenberger of Wichita Police Department to annex land generally located northwest of the intersection 327th Street West and 111th Street South. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Place the annexation ordinance on first reading.

Background: The Wichita Police Department is requesting to annex 617.29 acres of land generally located northwest of the intersection of 327th Street West and 111th Street South. This is an island annexation located on the southwest side of Sedgwick County. The City of Wichita is the property owner of the future Explosive Ordinance Disposal Range. It is anticipated that the property will be developed with a 40' x 80' metal storage building. A plat has not yet been submitted to the Metropolitan Area Planning Department for review. An isolated road segment located at Pawnee, between Maize Road and 119th Street West, is also included with this annexation request.

Analysis:

Land Use and Zoning: The proposed annexation consists of approximately 617.29 acres of property currently zoned "RR" Rural Residential. The "RR" Rural Residential zoning will convert to "SF-5" Single-Family Residential upon annexation. Property directly to the north, east, south and west is zoned "RR" Rural Residential and is primarily undeveloped, with a few homes to the south and east. Whether the applicant will apply for a conditional use permit under the existing zoning or request a rezoning to "GI" General Industrial has yet to be determined.

Public Services: There are no water and sewer services near the proposed property.

Street System: The subject property borders 327th Street to the east, 111th Street to the south and 343rd Street to the west--all of which are two-lane gravel roads. The City of Wichita Capital Improvement Program (CIP) 2005-2014, the Sedgwick County Capital Improvement Program 2006-2010, and the 2006 Transportation Improvement Program do not call for any improvements near the proposed annexation site.

Public Safety: Fire services to this site can be provided by the Cheney Fire District within a twenty-six (26) to twenty-seven (27) minute approximate response time from Cheney Fire Department, located at 525 North Main, Cheney, Kansas. Police protection will be provided to the area by the Sheriff of Sedgwick County, headquartered at 141 West Elm, Wichita, Kansas.

Parks: There are no parks near the proposed property.

School District: The annexation property is part of the Unified School District 268 (Cheney School District). Annexation will not change the school district.

Comprehensive Plan: The proposed property does not fall within the 2030 Wichita Urban Growth Area as shown in the Wichita-Sedgwick County Comprehensive Plan, but due to the nature of the anticipated use of the property, the proposed annexation appears to be consistent with the Wichita-Sedgwick County Comprehensive Plan overall.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is \$79,630 with a total assessed value of \$23,889. This property is owned by the City of Wichita and is therefore tax exempt.

Goal Impact: Approving the annexation request would impact Wichita's Safe and Secure Community Goal, for annexation of this property would assist the City in ensuring that Wichita and Sedgwick County citizens are safe.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, et seq.

Recommendations/Actions: Approve the annexation request, place the ordinance on first reading and authorize the necessary signatures.

ORDINANCE NO. _____

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A06-17)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The governing body, under the authority of K.S.A. 12-519, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV respectively:

Section 26, Township 29 South, Range 4 West of the 6th Principal Meridian except the east 1396 feet of the south 537 feet AND EXCEPT for that part designated as road right s of way.

AND ALSO:

Pawnee Avenue, from the west right of way line of Lark lane, west to a point on the north right of way line of Pawnee Avenue located 366.60 feet west of the east line of Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas and said line extended south.

AND ALSO:

119th Street West, from a point on the west right of way line of 119th Street West located 355.22 feet north of the south line of Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas and said line extended east, south to a point on the west right of way line of 119th Street West located 353.94 feet South of the North line of Section 1, Township 28 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas and said line extended east.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this _____.

Carlos Mayans, Mayor

ATTEST:
Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change subject to platting within one year and approve the CUP; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to City Council; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Agenda Item No. 37

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No.06-0856

TO: Mayor and City Council

SUBJECT: CUP2006-29 Associated with ZON2006-26 – Amendment #2 of DP-28
Broadway 47 Plaza Community Unit Plan (CUP): zone change from “LC”
Limited Commercial to “GC” General Commercial on a portion of the CUP.
Generally located at the southwest corner of 47th Street South and
Broadway Avenue. (District IV)

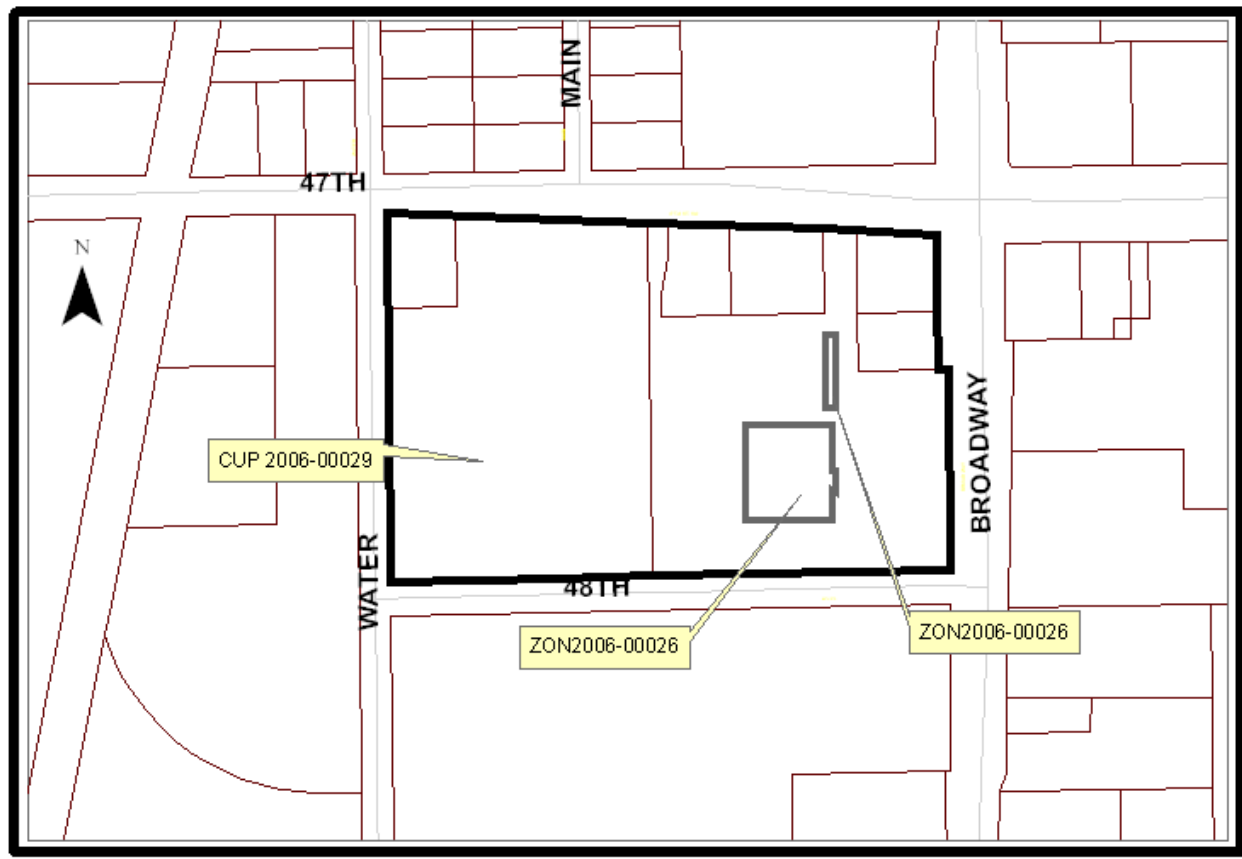
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve, unanimously (12-0), subject to staff conditions.

MAPD Staff Recommendation: Approve, subject to conditions.

DAB IV Recommendation: Approve, unanimously (7-0), subject to staff conditions.



Background: The applicant requests a zone change from “LC” Limited Commercial to “GC” General Commercial on a (+) 34,760-square foot portion(s) of Parcel 1. The requested “GC” zoning is for a Home Depot’s proposed garden center, which is considered outdoor storage and sales. The applicant also requests Amendment #2 to the CUP. The proposed amendment addresses redevelopment of the CUP by reducing the area of Parcel 1 and reconfiguring it to create six (6) new parcels; Parcels 1 (reduced in size and reconfigured), 7, 8, 9, 10 & 11. The existing Parcels 2, 3, 4, 5 & 6 of the CUP are not affected by the proposed amendment.

The proposed uses for Parcels 7, 8, 9, 10 & 11 are: shopping center, financial institutions, office, personal services and retail sales as permitted by the zoning district. These proposed uses listed are permitted by right in the existing parcels of the CUP. The maximum building coverage is 30%, floor area ratio is 30%, maximum building height is 35-feet and maximum number of buildings is one (1). These are the same as all or most (but never exceeding) of the existing parcels. Parcel 11 has 35% max floor area ratio, rather than 30%, which all other the other parcels have, other than Parcel 1. Parcel 1’s proposed uses are: shopping center, financial institutions, office, personal services, retail sales, garden center, and outdoor sales and storage. Parcels 1’s maximum building coverage is 35%, floor area ratio is 40%, maximum building height is 55-feet and maximum number of buildings is four (4). Parcel 1 is the proposed site of the Home Depot. Maximum floor area ratio is approximately the same as in the original CUP, but it appears that maximum building area has increased (10%).

The site currently has a large retail box (1965) on it, most of which is a vacant Checkers grocery store. A pawnshop, a hair salon, a nail salon, a Rent-a-Center, a submarine sandwich shop and a tax preparing office occupy the rest of the building. The applicant is proposing to allow those existing businesses to remain in the eastern portion of the big box, while demolishing the rest of the structure, then rebuild as a Home Depot. Per the current Unified Zoning Code (UZC) a pawnshop is a specific use. At the time of the recording of the original CUP, a pawnshop was considered retail. Per the current UZC, a pawnshop is not allowed in the CUP and the existing pawnshop is considered a legal nonconforming use. Approximately half of the site has never been developed. Other developments in CUP DP-28, on the out parcels, is either, (a) retail; a Dollar Store (1999), a Burger King (1999), a Hollywood Video (1998), or (b) a gas station with a convenience store and car wash (1987), or (c) financial; an Emprise Bank (1989).

Analysis: At the District IV Advisory Board’s July 5, 2006 meeting, the board voted (7-0) to approve subject to staff recommendations. No one present at the meeting spoke against the proposal. At the MAPC’s July 6, 2006 meeting, the MAPC voted (12-0) to approve subject to staff recommendations. No one present at the meeting spoke against the proposal. No protests have been received and staff has not received any phone calls protesting the proposal.

The recommendation is that the application be APPROVED subject to replatting within one year and subject to the following conditions:

A. APPROVE the zone change (ZON2006-26) to “GC” General Commercial on the described portion(s) of Parcel 1:

B. APPROVE Amendment #2 to Community Unit Plan DP-28 (CUP2006-29), subject to the conditions listed on the proposed amendment to the CUP and the following changes to the proposed amendment’s General Provisions, Parcel Descriptions and Proposed Uses:

1. Change language in General Provision #3, ‘Drainage’ to “...drainage and drainage improvements will be guaranteed at the time of the final plat.

2. Reduce the parking requirements in the reconfigured Parcel 1 and the newly created Parcels 9, 10 & 11, by 25%.
3. Add Parcels 2, 3 & 6 to General Provision #9, 'Landscaping' in reference to landscaping plan and guarantee.
4. Revise General Provision #6 "signs": (a) No portable signs or off site signs permitted on the CUP. Allow (a) Maximum size of wall signs for Parcel 1 shall be increased by 20% per City sign code adjustments. (b) Maximum number of wall signs per elevation for Parcel 1 shall increase by two (2). This will allow five (5) signs. (c) Allow one (1) multi-tenant sign along the CUP's 47th Street South frontage and one (1) along its Broadway Avenue frontage, per the City sign code for the "LC" zoning district
5. All property included within amended portion of the C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed.
6. The resolution establishing the amendment and the zone change shall not be published until the replat has been recorded with the Register of Deeds. Prior to publishing the resolution establishing the amendment and the zone change, the applicant shall record a document with the Register of Deeds indicating that the replatted portion of the CUP (referenced as DP-28) includes special conditions for development on this property.
7. The applicant shall submit four (4) revised copies of the amended C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change subject to platting within one year and approve the CUP; instruct the Planning Department to forward the ordinance for first reading when the plat is forwarded to City Council; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Agenda Item No. 38

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0857

TO: Mayor and City Council

SUBJECT: VAC2006-00013 - Request to vacate a portion of platted street and alley right-of-ways, generally located southeast of the 9th Street North and Market Street intersection.
(District VI)

INITIATED BY : Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The Stoner Apartments were built in 1909 on Lots 138 & 140, the Munger's Original Town of Wichita plat. The Stoner encroaches into the street and alley rights-of-way (ROW) as described. The Stoner has been deemed eligible for historic designation and the Historic Preservation Planner has submitted the application. Removing the Stoner from the described ROW is essential to this application process. This portion of 9th Street North, between Broadway Avenue (east) and Water Street (west), has had at least seven (7) approved vacations of its ROW between 1959 and 2001. There are utilities, manholes and a sewer line in 9th Street and alley ROWs. This portion of 9th Street is classified as a residential street, and the proposed vacation does not reduce its ROW to a substandard width. The Munger's Original Town of Wichita plat was recorded on March 25, 1870.

Analysis: The MAPC voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

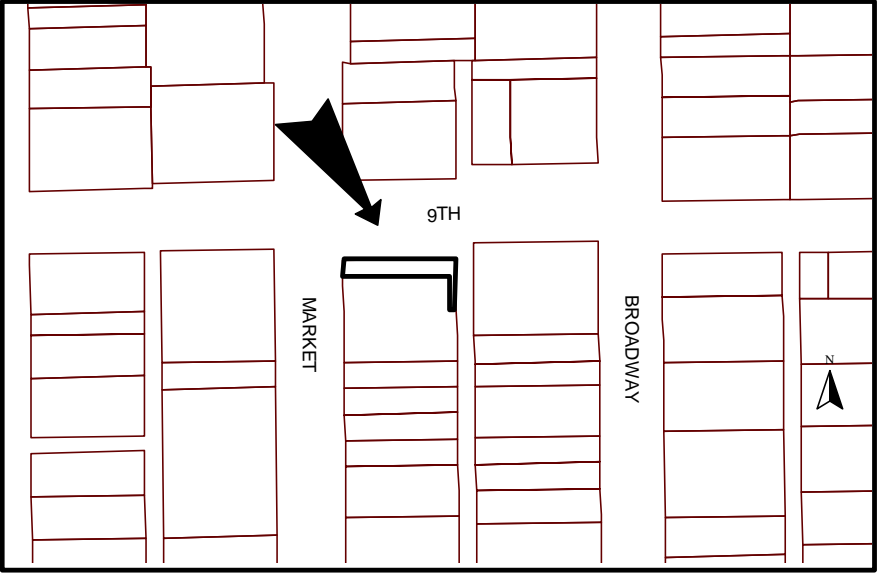
Legal Considerations: A certified copy of the Vacation Order, a contingent alley dedication by separate instrument and a restrictive covenant will be recorded with the Register of Deeds

Attachments: A contingent alley dedication and a restrictive covenant.

Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.



Agenda Item No. 39

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0858

TO: Mayor and City Council Members

SUBJECT: DED 2006-17 -- Dedication of Street Right-of-Way (Located West of Ridge Road and South of Kellogg). (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.

Background: This Dedication is associated with Lot Split Case No. SUB 2006-57 (Block 1, Tract 3, Santa Fe Industrial Subdivision). The Dedication is for five feet of additional street right-of-way along Woodchuck Lane.

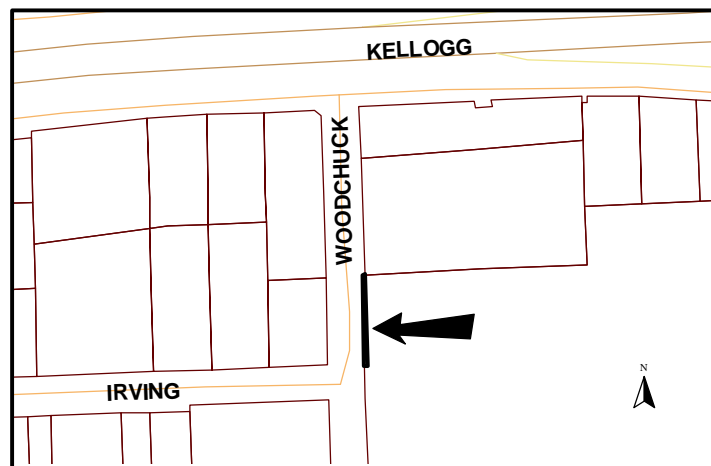
Analysis: None.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.



Agenda Item No. 40

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0859

TO: Mayor and City Council Members

SUBJECT: DED 2006-18 -- Dedication of a Utility Easement, DED 2006-19 -- Dedication of Access Control and DED 2006-20 -- Dedication of Street Right-of-Way (Located South of McArthur Road and West of Hydraulic). (District III)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedications.

Background: These Dedications are associated with Lot Split No. SUB 2006-64 (Lot 1, Block 2, Louis Addition). The Dedications are for: 1) a two-foot utility easement for construction and maintenance of public utilities; 2) access control, except for two openings along MacArthur Road; and 3) street right-of-way along MacArthur Road.

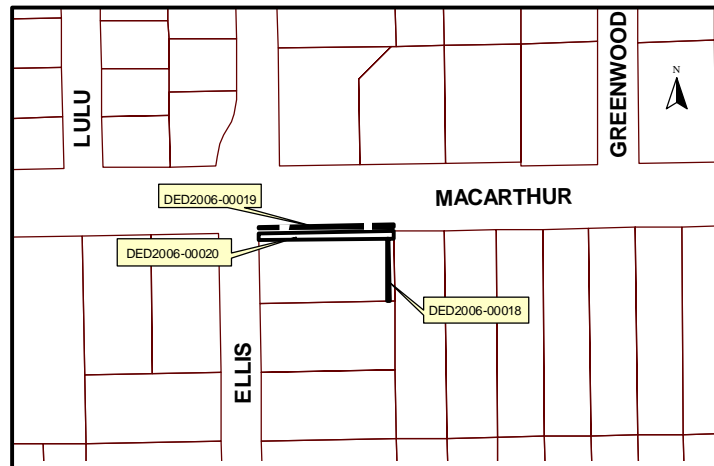
Analysis: None.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.



Agenda Item No. 41

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0860

TO: Mayor and City Council Members

SUBJECT: DED 2006-21 -- Dedication of a Utility Easement and DED 2006-22 -- Dedication of Access Control (Located on the North Side of Pawnee and East of Oliver). (District III)

INITIATED BY : Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedications.

Background: These Dedications are associated with a Lot Split No. SUB 2006-25 (Block H, McAdams Acres Addition). The Dedications are for 1) a ten-foot utility easement for construction and maintenance of public utilities; 2) complete access control along Pawnee Avenue.

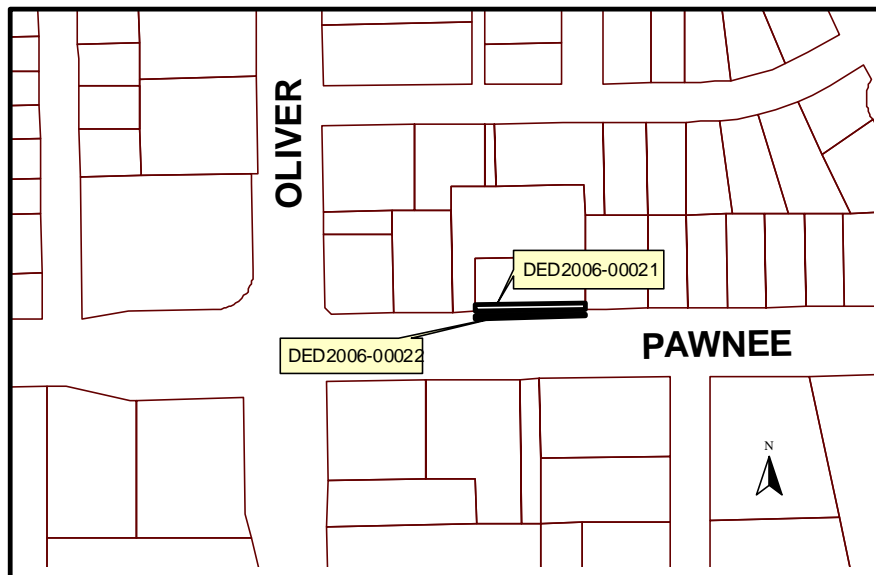
Analysis: None.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.



Agenda Item No. 42

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0861

TO: Wichita Airport Authority

SUBJECT: AON Service Corporation (ASC) – Supplemental Agreement No. 1

INITIATED BY : Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: On September 1, 1981, the Wichita Airport Authority entered into an Agreement with Don Flower Associates. Inc. for the construction of a 15,748 sq.ft. facility located at 1995 Midfield Road on Wichita Mid-Continent Airport. ASC is successor-in-interest to Don Flower Associates. The term of the Agreement is through August 31, 2006, and includes multiple renewal options.

Analysis: ASC is desirous of exercising one of three, five-year renewal options at this time. The term of the extension is for the period September 1, 2006 through August 31, 2011.

Financial Considerations: The facility has been appraised by the Martens Companies. The original Agreement states that rental rates during the option periods will be at 50% of fair market rental value. Based upon the appraisal, an annual revenue of \$72,834.50 will be generated for the WAA.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through initiating and maintaining agreements which allow the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement, and authorize the necessary signatures.

Agenda Item No. 43

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0862

TO: Wichita Airport Authority

SUBJECT: Agreement – Cessna Aircraft Company

INITIATED BY : Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: Upon completion and occupancy of a new facility on Mid-Continent Airport, Honeywell vacated the office building previously occupied by Honeywell at 1935 Midfield Road. The building is now available for lease by the Wichita Airport Authority.

Analysis: Cessna Aircraft Company has expressed an interest in leasing the facility for a three-year term, commencing August 1, 2006, with ten automatic one-year renewal options, unless cancelled.

Financial Considerations: The facility has been appraised by the Martens Companies. A rental rate of \$7.00/sq.ft. is recommended. The facility encompasses 7,150 sq.ft., and will yield an annual rental amount of \$50,050. If the renewal options are exercised, rental increases will occur every two years until 2015, at which time the rental rate will remain at \$8.00 for the remaining four years.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through initiating agreements which allow the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement, and authorize the necessary signatures.

Agenda Item No. 44

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0863

TO: Wichita Airport Authority

SUBJECT: Sublease Agreement between Midwest Corporate Aviation, Inc. and
Quasar Aviation Corporation – Colonel James Jabara Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the sublease agreement.

Background: Midwest Corporate Aviation (MCA) is the fixed base operator on Colonel James Jabara Airport and has space available in a 12,000 sq.ft. hangar constructed by MCA.

Analysis: MCA has been approached by Quasar Aviation Corporation to sublease the facility for a three-year period, and MCA is able to accommodate this request.

Financial Considerations: There is no financial impact to the Wichita Airport Authority.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted by utilizing existing facilities to the fullest extent.

Legal Considerations: The Law Department has approved the sublease agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the sublease agreement and authorize necessary signatures.

Attachments: Two original signature copies and 12 distribution copies of the sublease agreement.

MCA HANGAR NUMBER SEVEN LEASE

This lease Agreement is made effective the 1st of September, 2006, between Midwest Corporate Aviation, Inc. having its principle place of business in Wichita, Kansas, hereinafter referred to as the Lessor, and Quasar Aviation Corporation also having its principle place of business in Wichita, Kansas hereinafter referred to as Lessee.

WITNESSETH

That the Lessor does hereby demise and lease unto the Lessee the premises described as the MCA Hangar Number Seven Lease containing approximately 12,000 square feet. The leased premises are to be used and occupied by said Lessee as facilities for storing aircraft and for the designing, development, construction, and testing of a new jet aircraft and for no other purpose, for the term of thirty-six (36) months commencing on the 1st of September, 2006, and terminating at 11:59pm, August 31, 2009, unless sooner terminated as hereinafter provided.

1. RENT: Lessee covenants and agrees to pay to Lessor as monthly rent for said premises, the sum of seven thousand five-hundred dollars and no cents (\$7,500.00) per month, lawful money of the United States payable monthly in advance on the First day of each month, at the office of the Lessor, Wichita, Kansas, or such other place as the Lessor in writing may direct.

2. CONDITION OF PREMISES; REPAIRS AND MAINTENANCE: Lessee acknowledges that Lessee has thoroughly examined and knows the condition of said premises and that no statements or representations as to the past, present or future condition of repair thereof, or of the building, of which the same are a part, not herein expressed, have been made by or on behalf of Lessor. Lessee agrees that the premises are presently in a state of reasonably good condition and accepts said premises in their present condition, here by waiving any claim or right on account thereof, and agrees that Lessor, except as herein otherwise expressly provided, shall not be called upon or required at any time to make any improvements, alterations, changes, additions, replacements or repairs in or to said premises or any part thereof, or to any building of which the same are a part. Lessee agrees to maintain the demised premises in reasonably good repair and leasable condition during the continuance of this lease, except in case of damage arising from the negligence of the Lessor, its agents or employees; subject, however, to provision of paragraph 6.

3. LESSEE'S OPERATION COSTS: In addition to the Rent described in Paragraph 1, Lessee shall provide and shall pay when due the actual cost of the operations of the building, including, when applicable, but not limited to heat, gas, water, electricity, or other utilities; maintenance and upkeep costs of all facilities including the roof, shell, interior, heating, all interior fixtures, interior finishes; together with all services required for the facility including trash removal, janitorial, snow removal, and security; as well as liability insurance, the primary land lease payment to the City of Wichita, building insurance, special assessments on the property and ad valorem taxes, if any, and all other items properly constituting operating cost of the building, except as set hereinafter set forth in this Section 3. Lessor shall not be responsible for any failure or interruption of the services enumerated above, howsoever such failure or interruption may be caused and the Lessor shall not be liable for any damages on said account.

4. ACCIDENT LIABILITY: Lessor shall not be liable to Lessee or any other person for or on account of any injury or damage occasioned in or about said premises or said building, to persons or to property of any nature or sort whatsoever, or for or on account of any injury or damage to persons or construction or condition or present or future lack of repair of said premises of said building, or of the wiring, equipment or apparatus therein or thereof, nor for any damage or

injury occasioned by or from any plumbing, gas, water, steam, or other pipes being out of repair, or by the bursting, leaking or running of any water closet, tank, plumbing, nor for any other damage by water in, above, upon or about said premises, nor for any damage caused by water being upon or coming through the roof, ceiling, side walls, or otherwise, nor for any damage occasioned by or from the use, misuse, or disuse of said premises or building or any part thereof or of any equipment therein or apparatus thereof or by any other occupant thereof or by or from any act, omission or neglect of any such other occupant or by or from acts of owners or occupants of adjoining or contiguous properties, or in any manner whatsoever growing out of the past, present or future condition or use of the demised premises or said building or any part hereof. Lessor has no actual knowledge of any material defect in the structure, wiring, equipment, plumbing or pipes, not ascertainable upon a reasonable inspection, whose existence has not been disclosed to Lessee.

5. **SURRENDER; ALTERATIONS BY LESSEE:** Lessee agrees to deliver up the premises upon the termination of this Lease in reasonably good repair and condition, reasonable wear and use excepted. Lessee covenants not to make any changes, alterations, or additions in or to the premises without the written consent of Lessor first had and obtained, and if any improvements or alterations or additions are permitted to be made, they shall be surrendered to Lessor upon the termination of this Lease, howsoever the same may be terminated, without any compensation therefore to Lessee.

6. **FIRE OR CASUALTY:** If, during the continuance of this Lease, the said premises be so damaged by fire or other casualty as to be rendered unleaseable then in case repairs are not initiated within 30 days and prosecuted with due diligence, it shall be optional with either party hereto, by written notice not later than 60 days after said fire or casualty, to terminate this Lease, and in case of termination the rent shall be paid to the day of such fire or other casualty. In the event the damage shall be repaired as above set forth the rent shall not be abated during the period of repair. All insurance derived from the policy of the Lessor shall remain Lessor's property.

7. **RIGHT OF INSPECTION:** Lessor hereby reserves the right to enter upon and examine any part of the demised premises, and to make such repairs, alterations or improvements as Lessor may think necessary pursuant to Section 2 hereof and for that purpose, for a period of time reasonably required, Lessor may erect scaffolding or necessary structures, and in such event Lessee shall not be allowed any damages for any injury or inconvenience occasioned thereby.

8. **LESSOR'S REMEDIES:** If the Lessee defaults in payment of the rent reserved herein, or in the full and complete performance of any other agreement contained herein or if Lessee vacates or abandons the demised premises, then in any of such event it shall be lawful for the Lessor, in addition to the remedies given it by law, either (1) to declare the term hereof ended and to re-enter the premises or any part hereof, either with or without process of law, and be re-vested with Lessor's former estate in said premises, free and clear of all claims and demands of Lessee and to recover immediately all damages for the breach of this lease, or (2) Lessor, at its option, may take possession of said premises by summary proceedings or other legal action or in any other manner whatsoever and in its own name may lease the whole of said premises or any part thereof and upon such terms and conditions and for such rent as Lessor may deem proper, and may collect said rent or any other rent which may thereafter become payable and apply the same toward the amount due or thereafter to become due from Lessee hereunder and on account of such expense of leasing and any other charges sustained by Lessor and Lessee agrees to pay Lessor monthly on the last day of each month of the term hereof the amount of any deficiency between the amount of monthly rental agreed to be paid hereunder and the amount actually received for the month in which such deficiency occurs. Lessor may later change the premises in order to secure another Lessee and such alteration or change shall not release Lessee from liability. Neither this lease nor

the liability of Lessee to pay rent shall be deemed to have been terminated by reason of any re-entry or by commencement of any action in unlawful detainer unless Lessor shall first notify Lessee in writing that it has elected to terminate this lease. In the event of default by Lessee, it shall be Lessor's duty to mitigate its damages as provided by law. However, Lessee shall be responsible for all costs and expenses, including attorneys' fees incurred by Lessor in connection with the default.

9. **MANNER OF USE:** Lessee agrees not to use or suffer or permit to be used said premises or any part thereof for any purpose or use in violation of any law or ordinance or regulation of any governmental authority, or in any manner that will constitute a nuisance or an annoyance to the owners or occupants of adjoining or neighboring property, or to other Lessees or occupants of said building or that will injure the reputation of said building, or for any extra hazardous purpose or in any manner that will violate any policy or policies of insurance, or suspend, avoid, make inoperative or increase the rate of premiums of any insurance at any time carried on said building or on any of the contents thereof and Lessee further agrees not to keep or permit therein any gasoline, distillate or other combustible product without first obtaining the written consent of Lessor and all insurance companies carrying fire and/or fire rent insurance on said building. Lessee agrees not to use or permit said premises or any part thereof to be used in any manner that will injure or impair the flooring or structural strength of said building or cause said building to vibrate, and not to place or permit to be placed in said demised premises any machinery or apparatus, the weight or vibration of which will injure or impair the flooring or structural strength of said building.

10. **BANKRUPTCY, ETC.:** If a petition in bankruptcy shall be filed by or against Lessee or if Lessee shall be adjudged bankrupt or insolvent by any Court, or if a Receiver or Trustee shall be appointed in any suit or proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if an attachment or execution shall be issued against the property of Lessee, or if this lease or Lessee's interest or the estate created hereby in said premises vests in any other person than Lessee by operation of law or otherwise except by written consent of Lessor, then in each and every such case it shall be lawful for Lessor to forthwith terminate this lease and/or to pursue any of the remedies given Lessor hereunder or by law.

11. **ASSIGNMENT AND SUBLETTING:** Lessee covenants and agrees not to license the use of or to sub-let said premises or any portion thereof, or assign or mortgage or transfer this Lease or any rights therein or in the leasehold premises, without Lessor's written consent first had and obtained, and any licensing, sub-letting, assignment, mortgaging or transferring, or attempted licensing, sub-letting, assignment or mortgaging or transferring without such written consent shall be void and confer no rights whatever and shall, at the written option of Lessor be cause for the termination of this Lease. Any consent given by Lessor to Lessee to sub-let said premises or any portion thereof for or assign this Lease, shall not be construed as a consent to any further or other assignment or sub-lease to which its consent in writing has not been obtained.

12. **EMINENT DOMAIN:** In the event there is a taking of the whole or any portion of the demised premises because of the exercise of the power of eminent domain, this Lease shall, at the option of Lessor exercised in writing, cease and terminate simultaneously with the divesting of Lessor's interest to the property take, and in such case all compensation to be made because of such taking shall be payable to Lessor and no portion thereof shall be paid to Lessee.

13. **TIME OF ESSENCE; WAIVER:** Time is of the essence of each and all of Lessee's obligations hereunder and full and complete performance by Lessee shall be a condition precedent to the right of Lessee to receive possession or remain in possession, as the case may be, of the

premises or to have this Lease continue in effect. No waiver by either party of the performance of any of the agreements herein contained shall be deemed to be a waiver of any subsequent breach or failure to perform the same or any other agreement contained herein.

14. **NATURE OF AGREEMENTS:** If Lessee is more than one person, then the agreements of Lessee herein contained shall be deemed joint and several. Currently Lessee is a single entity and not more than one person. This Lease and all the terms hereof shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, and the agreements of Lessee shall be construed to be covenants running with the land.

15. **POSSESSION; QUIET ENJOYMENT:** It is understood and agreed by and between Lessor and Lessee that possession of the premises has been delivered as of the effective date of this Lease. Lessor covenants that during the term of the Lease, should Lessee perform all the covenants hereof, then Lessee shall be entitled to quiet occupancy of the leased premises, subject to the Lessor's rights as set forth herein.

16. **SUBORDINATION TO SENIOR LEASES AND ENCUMBRANCES:** This Lease is subject to all present and future mortgages, deeds of trust or other encumbrances affecting the building or the land on which the premises are situated, and to all leases under which Lessor herein holds possession of the building or land in or on land in or on which the demised premises are situated. Lessee agrees to execute and deliver without additional consideration to Lessee, such instruments subordinating this Lease to any such mortgage, deed of trust, other encumbrances and/or senior lease as shall be required by the mortgagee, trustee or holder of encumbrance or senior Lessor and does hereby irrevocably appoint Lessor herein Lessee's attorney-in-fact during the term thereof to execute such instruments. Provided, however, Lessor shall provide Lessee with written notice of any specific sale, transfer, assignment or encumbrance of Lessor's interest in the premises. Lessee agrees to be bound by and observe and comply with any and all provisions of any underlying lease, including the Wichita Airport Authority lease, relating to or affecting the demised premises. If any such underlying lease shall be terminated, including the Wichita Airport Authority lease, and Lessee is deprived of possession of the demised premises on account of such termination, this Lease shall terminate simultaneously therewith and both parties hereto shall be released from further liability hereunder.

17. **REGULATIONS OF BUILDING:** Lessee agrees to abide by all such rules and regulations as Lessor may from time to time promulgate for the safety, care and cleanliness of the building and for the preservation of good order therein. Lessee may change the name of the building at anytime, however the new name shall be subject to Lessor's approval.

18. **MECHANIC'S LIENS:** Lessee shall not permit or suffer any mechanic's or materialmen's or like liens to be filed or recorded against the premises, or to become a lien thereon and if any such lien or liens are filed or recorded or become a lien thereon, and are not discharged within five days, Lessor may terminate this Lease.

19. **WASTE OR NUISANCE:** Lessee shall not commit or suffer to be committed any waste upon the Leased Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other Lessee or occupant in the area in which the Leased Premises may be located.

20. **COMPLIANCE WITH LAW:** (a) Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Lessee's use or occupancy of the leased premises,

regardless of when they become effective including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, hazardous material, waster disposal, air emissions and other environmental matters, all zoning and other land use matters and utility availability, and shall comply with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Lessor or Lessee with respect to the use or occupation of the leased premises. (b) Lessee shall be responsible, at its sole cost and expense, for any interior modifications or alterations to the leased premises necessitated by any federal, state or local law, ordinance or regulations as a result of any change in Lessee's use or occupancy of the leased premises, including the American's With Disabilities Act. (c) Lessee agrees to indemnify and save Lessor, its partners, managers, agents and employees harmless from and against any and all damages, costs, expenses, claims, penalties and other liabilities (including, without limitation, reasonable attorneys' fees and the cost of any remedial or abatement activities) arising during the term of this Lease or any time thereafter, directly or indirectly, from any violation by Lessee of applicable laws to Lessee's operation and use of the leased premises.

21. HAZARDOUS SUBSTANCES: (a) Lessee agrees and covenants that it shall not keep, ship to, ship from, store, permit, generate, treat or dispose in, on, and/or around, the Leased Premises any "hazardous substances" or any "hazardous waste", as defined in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. and/or the Comprehensive Environmental Response, Compensation and liability Act, 42 U.S.C. 9601 et seq., or any regulations promulgated thereunder or any Kansas laws similar thereto; or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended (collectively "Hazardous Substances"); unless all such laws, ordinances, rules, regulations, requirements, etc., and each of them (collectively "Government Regulations"), are strictly adhered to and complied with by the Lessee. "Hazardous Substances" and "hazardous waste" includes but are not limited to, asbestos, polychlorinated biphenyls ("PCB's") and petroleum. (b) Lessee shall promptly comply with all local, state and federal Governmental Regulations now or hereafter pertaining to the use, discharge, handling, transportation, disposal, treatment, generation, storage, sale or presence on the leased premises of Hazardous Substances, Lessee shall defend, indemnify and save Lessor, its partners, managers, agents and employees harmless from and against any and all damages, costs, expenses, claims, penalties and other liabilities (including, without limitation, reasonable attorneys' fees and the cost of any remedial or abatement activities) arising during the term of this Lease or any time thereafter, directly or indirectly, from the use, discharge, handling, transportation, disposal, treatment, generation, storage, existence or sale of Hazardous Substances during the term of this Lease in, or about the Leased Premises Lessee's obligations under this section shall survive the termination of this Lease. Notwithstanding anything to the contrary contained herein, Lessee shall not be responsible or liable for any hazardous materials, substances or other environmental liabilities, costs, or expenses resulting from the presence, use or disposal of hazardous materials or substances in, upon, or beneath the Leased Premises prior to the Commencement Date of this Lease.

22. RE-ENTRY AND LESSOR'S LIEN: If default shall be made by Lessee in respect to any of the foregoing covenants, Lessor may discontinue furnishing any services above referred to, or any part thereof, and may re-enter the said premises without any formal notice or demand and hold and enjoy the same thenceforth as if these presents had not been made, without prejudice, however, to any right of action or remedy of the said Lessor in respect to any breach by the Lessee of any of the covenants herein contained. All goods, chattels, fixtures and other property belonging

to Lessee which are, or may be put into the said premises during said term, whether exempt or not, from sale under execution and attachment under the laws of the State of Kansas, shall at all times be bound with a lien in favor of said Lessor and shall be chargeable for all rent, damages, and the fulfillment of the other covenants and agreements herein contained which shall be considered and treated as rent money due on said premises, and in case of any default or attempt to remove from said premises before termination of this lease leaving any portion of said rent unpaid, whether or not due, said Lessor shall be entitled to possession of same under said lien until all of the rent and other charges reserved herein shall be paid and to make sale thereof under said lien as under chattel mortgages.

23. **HOLDING OVER:** If Lessee holds over after the expiration of the term, with the consent of Lessor, the Lessee shall be deemed to hold the premises upon a month-to-month tenancy at a monthly rental equal to the highest monthly rental received during the primary term herein, and upon all other covenants, agreements and condition herein contained.

24. **NOTICES AND DEMANDS:** All notices or demands of any kind which Lessor may be required or may desire to serve on Lessee under the terms of this Lease, may be served upon Lessee personally, or, as an alternative to personal service, may be served either by leaving a copy of such notice or demand, addressed to Lessee, at the demised premises or by mailing a copy thereof by registered mail, addressed to Lessee's Registered Agent. Service thereof shall be deemed complete at the time of leaving the notice at the demised premises, or upon the lapse of the usual time for transmittal through the United States mail after deposit of said notice in said mail.

25. **ENTIRE UNDERSTANDING:** This Lease contains the entire understanding of the parties and no agreement heretofore or hereafter made shall be held as changing any of the terms of this Lease unless they are in writing and signed by both the Lessor and the Lessee. And it is agreed that the covenants and agreements herein contained shall be binding upon all heirs, executors, administrators, successors and assigns of the Lessor and the Lessee.

26. **CAPTIONS:** The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe and scope of the Lease nor the intent of any provision thereof.

27. **SPECIAL PROVISIONS:**

a. The Rent shall not be subject to any claim of offset for any matter and shall be paid by Lessee irrespective of any of such claims.

b. This Lease shall not be assignable by Lessee without the prior consent in writing of the Lessor, provided that consent to assignment by Lessee to another legal entity shall not be unreasonably withheld if financial responsibility of the assignee is approved by the Lessor or performance of the assignee is guaranteed by the Lessee and The Wichita Airport Authority of the City of Wichita approves such assignment.

c. This Lease shall be contingent upon: a) Lessor and Lessee reviewing and approving the final plans for the Leased Premises; b) Lessor's review and approval of Lessee's financial statement; c) Securement by Lessor of any necessary approval of this lease by the Wichita Airport Authority; d) Advance payment of the first and final monthly rents. All contingencies shall be released on or prior to August 31, 2006. In the event the contingencies are not satisfied then this Lease shall be terminated with no further obligation of Lessor or Lessee.

d. Lessor and Lessee each waive any rights each may have against the other on account of any loss or damage occasioned to Lessor and Lessee as the case may be, their respective property, the leased premises or its contents, or to other portions of the leased premises arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried but only to the extent of reimbursement of the loss. This waiver shall be null and void if the same would operate to extinguish, exclude or reduce coverage under the respective policies of insurance.

e. Commencing with the 1st day of September, 2007, the Rent set forth in Section 1 above will be increased annually on the anniversary date of the Lease by any increase in the CPI. The CPI index used to determine the amount of the increase shall be the Department of Labor Consumer Price Index, Kansas City, Missouri, All Urban Consumers. In the event this index should be discontinued, then the index to be used will be the geographically closest Department of Labor Consumer Price Index then in existence.

f. Lessor shall have the option at any time during the original term or any renewal thereof to terminate this Lease upon ninety (90) days written notice to the Lessee. In the event of exercise of this option by the Lessor, the facility rent paid by Lessee shall be proportionately reduced.

g. Lessor shall have full control and discretion concerning all signage, awnings, canopies and outdoor displays on the Building. Lessee shall not place on, in or near any exterior door, any wall or any window of the Leased Premises any sign or advertising matter that is visible from the exterior of the Leased Premises without first obtaining Lessor's written approval and consent. All signs shall comply with applicable ordinances or other governmental restrictions and the determination of such requirements and the prompt compliance there with shall be the responsibility of the Lessee. All signs and the installations thereof pertaining to the Leased Premises shall be paid by Lessee. Lessee further agrees to maintain sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in writing by Lessor in good condition and repair at all times.

h. Lessee shall provide Commercial General Liability insurance with limits of at least \$10,000,000 per occurrence including premises-operation liability, independent contractors liability, on-airport premises auto liability, and contractual liability to cover this Lease. Lessee agrees to maintain Hangarkeepers Liability Insurance in an amount of not less than \$1,000,000 per aircraft and \$1,000,000 per occurrence to cover aircraft in the care custody and control of Lessee. The policy shall include the Lessor, the Wichita Airport Authority, and the City of Wichita, their subsidiaries and divisions, as well as the directors, officers, employees and agents thereof. The insurance carried by Lessee as required hereunder shall be primary to any other insurance available to the Lessor, the Wichita Airport Authority, and the City of Wichita.

i. Lessee will defend, indemnify and save harmless Lessor of and from all fines, suits, claims, demand, expenses, including attorney's fees, costs, and actions of any kind by reason of Lessee's use, occupancy, and control of the demised premises and of any breach, violation, or non-performance of any covenant hereof on the part of Lessee, regardless of any claim of negligence, fault or non performance by Lessor.

IN WITNESS WHEREOF Lessor and Lessee have respectively signed and sealed this Lease as of the day and year first above written.

LESSOR

LESSEE

“MIDWEST CORPORATE AVIATION”
Position:

“QUASAR AVIATION CORP.”
Position: APPROVAL

This MCA HANGAR NUMBER SEVEN LEASE shall not become effective until approval by the Wichita Airport Authority of the City of Wichita whose approval and consent to this Lease is indicated by its signature in the space below.

ATTEST: “THE WICHITA AIRPORT AUTHORITY”
WICHITA, KANSAS

By direction of the Wichita Airport Authority

By _____
Karen Sublett, City Clerk

By _____
Carlos Mayans, President

“LESSOR”
By _____
Victor D. White, Director of Airports

APPROVED AS TO FORM: _____ Date: _____
Director of Law

AGENDA ITEM NO. 45

City of Wichita
City Council Meeting
August 15, 2006

Agenda Report No. 06-0864

TO: Wichita Airport Authority
SUBJECT: RAGE, Inc. - Assignment
INITIATED BY: Airport Department
AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Assignment.

Background: On December 21, 1998, the Wichita Airport Authority approved an Agreement with RAGE, Inc. for use of land on which to construct an aircraft storage hangar on Colonel James Jabara Airport. RAGE is now requesting approval to transfer and assign one-half of its right, title and interest in the Agreement between the Wichita Airport Authority and RAGE to Devlin Management, Inc.

Analysis: Article 35 of the Agreement between RAGE and the Wichita Airport Authority states that RAGE may not assign the Agreement without the written consent of the Wichita Airport Authority, which consent shall not be unreasonably withheld. Use of the facility must be aviation-related, and RAGE has indicated that use by both RAGE and Devlin Management will be for general aviation purposes including hangaring and fueling of their aircraft.

Financial Considerations: There is no financial impact to the Wichita Airport Authority.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted by utilizing existing facilities to the fullest extent.

Legal Considerations: The Law Department has approved the Assignment.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Assignment from RAGE of one-half of its leasehold interests to Devlin Management, Inc. and authorize necessary signatures.

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